Supreme Court, U.S.
FILED
06-607 AUG 22 2006
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No._____

IN THE

Supreme Court of the United States

ROBERT KAHRE

Petitioner,

v.

SWISS CASINOS OF AMERICA, ET AL.,

Respondents.

On Petition For Writ Of Certiorari
To The United States Court of Appeals for the Ninth Circuit

BRIEF FOR PETITIONER

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QUESTIONS PRESENTED

Did the U.S. District Court and the Ninth Circuit Court of Appeals err by applying the *Rooker-Feldman* doctrine to Petitioner's U.S. district court action, when the defendants to the action were involved in pending parallel civil litigation in state and federal court at the time when he commenced his U.S. district court suit under federal law, when he was not named as a party in the defendants' underlying pending parallel civil litigation, when he was not served with legal process in those parallel civil cases, and when there was no final judgment entered against the Petitioner in the defendants' proceedings, and no possible judgment could be entered against him.

Did the Ninth Circuit Court of Appeals err by affirming U.S. district court sanctions against the Petitioner for an allegedly commencing a frivolous civil action, and in levying its own sanctions against Petitioner for appealing the U.S. district court's sanctioning order and judgment, when the original dismissal, sanctions, judgment and the affirmation by the Court of Appeals were all based upon an unauthorized expansion of the *Rooker-Feldman* doctrine, and when the Ninth Circuit court failed to examine in any manner whether the underlying U.S. district court action or the subsequent appeal were in fact and law frivolous.

PARTIES TO THE PROCEEDINGS

Petitioner is Robert Kahre. Respondents are Thomas Biggar; James C. Mahan; Todd M. Touton; R. Gardner Jolley; Lionel, Sawyer & Collins; Nevada State Bank; Resort At Summerlin, Ltd.; Resort at Summerlin, Inc.; Seven Circle Gaming Corp.; Swiss Casinos Holding, AG; Swiss Casinos of America, Inc.

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of Kahre's filings or presentation of facts and law in the case at bar.)

The February 18, 2004 order of the district court (11a-20a) sanctioning Kahre and enjoining him from further filings in the district court case, is unpublished. The February 27, 2003 order of the district court (PA 23a-38a) dismissing his First Amended Complaint and establishing a conditional order to show cause as to why Kahre should not be sanctioned for his "frivolous" complaint, is unpublished.

STATEMENT OF JURISDICTION

The Ninth Circuit issued an unpublished memorandum decision on January 13, 2006 that did not dispose of the appeal, and did not address whether or how Kahre's U.S. district court action, or any of his filings therein, were frivolous or otherwise sanctionable, which was the ultimate issue on appeal before the Ninth Circuit. It is thus unclear whether this memorandum decision was a final appealable order.[2] The Ninth Circuit denied a petition for rehearing of this memorandum decision on May 25, 2006.[3] The Ninth Circuit awarded Nevada State Bank

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[2]"Memorandum decision. A court's decision that gives the ruling (what it decides and orders done), but no opinion (reasons for the decision). Memorandum decision is not judgment nor decision of the court but merely by announcement of court's intended decision and is not appealable order. In re Pieper's Estate, 244 C.A.2d 670, 37 Cal.Rptr. 46, 50." Black's Law Dictionary (5th Ed. 1979).

[3]Kahre did not receive the January 13, 2006 memorandum decision concerning his appeal until January 20, 2006. He filed and served his petition for rehearing on January 30, 2006. It thus appears that the petition for rehearing was not timely filed in accordance 9th Cir. R. 27-10 (requiring the motion to be filed within fourteen days of the date of the order). This may have consequences under Sup. Ct. R. 13(3) if this incomplete memorandum

and R. Gardner Jolley's attorney's fees and double costs on May 25, 200[illegible] The Ninth Circuit Appellate Commissioner issued his order granting sanctions against Kahre in favor of Nevada State Bank and R. Gardner Jolley in the amount of $14,430 in attorneys' fees and $521.40 in costs on June 14, 2006. The Ninth Circuit denied Kahre's June 28, 2006 petition for rehearing of the May 25, 2006 and June 14, 2006 orders via its July 7, 2006 order.

This Court has jurisdiction under the Constitution for the United States of America, Article III, Section 2, and 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISIONS

The relevant statutory provisions cited herein are reproduced under Appendix A (PA 1a-7a).

STATEMENT OF THE CASE

Petitioner Robert Kahre's case originated from the U.S. District Court, District of Nevada, Case No. CV-S-02-0197-KJD-LRL. Kahre's case in the U.S. district court was deemed to be frivolous. It was dismissed without hearing or discovery and in large part based upon the district court's inappropriate

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is deemed some sort of final order. However, the instant petition is timely as to the orders of May 25, 2006, June 14, 2006, and July 7, 2006 addressed, *infra*. The assertions made in these Ninth Circuit decisions that Kahre's appeal was dismissed based upon what is clear misapplication of law and fact (*Rooker-Feldman* doctrine), and their content concerning sanctions levied against Kahre in the U.S. district court and the Ninth Circuit court, open the U.S. district court's sanctions, and the Ninth Circuit's affirmation of these sanctions, to review.

invocation of the *Rooker-Feldman* doctrine. (PA 23a-38a). Kahre was later ordered to pay $40,000 to certain Defendant/Respondents for commencing his suit under the provisions of 28 U.S.C., § 1331 and 26 U.S.C. § 7431 and seeking relief under, *inter alia*, the protections of 26 U.S.C. § 6103, a Treaty, and the U.S. Constitution. (PA 11a-21a). Kahre was charged with attorney's fees and costs in the trial court and again in the Ninth Circuit court upon grounds that his original complaint and appeal were "without merit," "frivolous," and filed in "bad faith," and without basis in fact or law. (PA 4a, 10a, 12a-14a, 36a). This vague Ninth Circuit determination was later determined to be based in large part upon the fact that the district and Ninth Circuit court had determined that "[t]he district court dismissed Kahre's action for lack of subject matter jurisdiction under the *Rooker-Feldman* doctrine." (PA 3a, 27a-29a). The Ninth Circuit found no abuse of discretion in these determinations. (PA 4a, 10a). The Ninth Circuit court sanctioned Kahre again in the sum of $14,951.40 for *appealing* the opinion of the U.S. district court. (PA 1a-5a, 7a).

I. General Background.

Respondent, Swiss Casinos AG, a Swiss gambling and gaming corporation, and its wholly owned domestic corporations, Swiss Casinos of America, Inc. and Seven Circles Gaming Corp., a/k/a Seven Circles Resorts, were developing a luxury Resort Casino in Las Vegas, Nevada known as The Resort at Summerlin (a/k/a Regent Las Vegas a/k/a Rampart Casino). These Respondents and their resort are collectively referred to herein as "The Resort."

The Resort at Summerlin could not pay its debts on $200 million in preferred stock issues and to pay building contractors, subcontractors and suppliers. The building

contractors and suppliers filed liens and commenced or threatened to sue The Resort for nonpayment of debts. The Resort filed for bankruptcy protection in several Nevada. The U.S. Bankruptcy Court authorized and permitted parallel civil litigation to be commenced to determine matters regarding contract disputes and liabilities, set offs, claims on construction performance insurance policies and bonds, etc. The Resort commenced or was named as a defendant in directly related and parallel lawsuits filed in both the State and U.S. District Court in Nevada. Petitioner, Robert Kahre and two of his Nevada sole proprietorships were mentioned in the complaints filed by The Resort against a particular subcontractor, Performance Contracting, Inc. (PA 41a ¶51). The counts and claims against the subcontractor were "dismissed in their entirety, with prejudice." (PA 74a-77a). Kahre was not named as or made a party and was not served with process in any of these state or federal cases. (PA 41a-44a ¶¶54, 64). The Resorts' lawsuits and claims were filed and still pending in both the State and Federal Courts in Nevada when Kahre commenced his U.S. district court suit against these Respondents. (PA 40a ¶¶ 46, 47).

The Resort and its Las Vegas law firm and attorney, Respondents Lionel Sawyer & Collins and attorney Todd M. Touton, had secretly used numerous subpoenaes in both state and federal court to obtain confidential information regarding Kahre from banks, armored car services, and others. (PA 41a-44a ¶¶54, 64). The confidential information that was solicited, inspected and publicly disseminated by The Resort included, but was not limited to, social security numbers and taxpayer return information regarding Kahre. (PA 40a ¶2 41a-44a ¶64); *see also* 26 U.S.C. § 6103(a,b). The specific taxpayer return information that was being solicited, and thereafter inspected and disclosed, if acquired, included Currency Transaction Reports (CTRs), Suspicious Activity Reports (SARs), and other

information filed with and kept by the Internal Revenue Service (IRS). (PA 54a-56a ¶¶ 199-204).

II. U. S. District Court Proceedings.

Kahre commenced his action against the named Respondents for failure to afford him due process and for violations of his right to privacy under, *inter alia*, the U.S. Constitution and 26 U.S.C. §§ 6103. (PA 39a-66a). Jurisdiction in U.S. District Court was declared in Kahre's Complaint[4] to be under 28 U.S.C. § 1331 and 7431. (PA 40a ¶¶ 1-3). At the time when Kahre commenced his suit in the same district court, The Resorts counts and allegations in its state court litigation against the subcontractor where Kahre was mentioned, had been were "dismissed in their entirety with prejudice." (PA 74a-77a).

Kahre's Complaint also sought injunctive relief from a parallel state-court discovery order that directed Respondent, Nevada State Bank to sign and submit an IRS Form 4506 for the sole purpose of acquiring taxpayer return information directly from the IRS and to disclose and turn that confidential taxpayer return information directly over to the international and interstate gambling enterprise and its Vegas law firm and attorneys. (PA 46a-66a ¶¶166-238). Respondent herein, James C. Mahan, issued the discovery order well after he had "dismissed" all of the counts and allegations in The Resort's state court complaints against the subcontractor where Kahre and his sole proprietorships were mentioned, thus bringing directly into question the propriety and ulterior motive for the now irrelevant and unnecessary "discovery." (PA 76a-77a). The information that The Resort was acquiring about Kahre and

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[4]References herein to the "Complaint" are to Kahre's First Amended Complaint as filed in the district court on March 1, 2002.

his sole proprietorships through their parallel civil litigation was being turned over to the office of U.S. Attorney in Las Vegas and to the Grand Jury. (PA 62a ¶225). This same confidential information was also being publicly disclosed and disseminated by these same Respondents. (PA 60a-63a ¶¶220-228).

On February 11, 2002, Kahre commenced his suit in the U.S. District Court according to existing law including, *inter alia*, 26 U.S.C. §§ 7431, 6103, and 28 U.S.C. § 1331. (PA 40a ¶3). Kahre relied on valid legal authorities, and as applied to the outrageous and unauthorized violation of his privacy and the spirit of 26 U.S.C. § 6103. *See Heathman v. U.S. District Court for the Central District of California*, 503 F.2d 1032, 1035-1037 (9th Cir. 1974)(Chamber, J., dissenting) (applying the protections of 26 U.S.C. § 6103 to returns of individual taxpayers, and prohibiting their production in response to discovery); *see also Scrimgeour v. IRS*, 149 F.3d 318 (4th Cir. 1998) (IRS found liable under 26 U.S.C. § 7431 for producing tax returns and other items protected under 26 U.S.C. § 6103 to private attorney who filed an IRS Form 4506 in the name of a third party); *see also In re Umback*, 350 P.2d 299 (Okla., 1960) (federal return information was held to be privileged and was not subject to discovery unless the individual was a named party in the action). The Resort's federal and state civil construction litigation was still pending and Respondents were still soliciting confidential information when Kahre commenced his action in the United States district court.

On February, 27, 2003, the U.S. district court dismissed Kahre's Complaint upon the Rule 12(b) motions to dismiss filed by Respondents. No hearings were ever held and no discovery was afforded to Kahre during the lower trial court proceedings. The *Rooker-Feldman* doctrine was the stated primary basis for the dismissal of Kahre's U.S. district court case, and for the sanctions against him. Kahre was also ordered to show cause why sanctions should not issue against him. (PA

37a-38a).

III. Ninth Circuit Court Proceedings.

On April 23, 2003, Kahre appealed the U.S. District Court Order to the Ninth Circuit. *See* Ninth Circuit Case No. 03-15751, *Kahre v. Biggar., et al.* Kahre had sufficient reason to believe that Respondent James C. Mahan, confirmed as a Federal Judge by the Senate on January 25, 2002, was a Federal officer and that there was 60 days within which to file his notice of appeal. Judge Mahan was represented by the Department of Justice throughout the district court proceedings, and he had carried out the acts complained of by Kahre after his appointment. (PA 52a-53a ¶¶190-194). After the Ninth Circuit Court of Appeals stated in an interim procedural order that the court would rule on the merits and had granted Kahre an emergency extension of time to file his opening brief, the Court of Appeals dismissed Kahre's appeal upon grounds that Kahre's appeal was not filed timely. *See Kahre v. Biggar*, 94 Fed. Appx. 656 (9th Cir. 2004)(unpublished memorandum disposition)(dismissing as untimely Kahre's appeal from the district court's February 27, 2003 judgment on the basis that Respondent Mahan was not a Federal official).

Upon remand, and after an extended period of time, and without the hearing requested by Kahre, the U.S. district court entered an order and judgment dated February 18, 2004 directing Kahre to pay $40,000 to Respondents for filing a frivolous complaint. (PA 11a-22a). The trial court's sanction order and judgment were not served upon Kahre by the lower Court or by the Respondents. After finding out about the trial court Order and judgment through another party whom the Respondents had approached and taken the funds due to Kahre on a contract, Kahre filed his motion to reopen the case. *See Kahre v. Swiss Casinos of America, Inc.*, U.S. district court Case No. CV-S-02-0197 KJD-LRL, CR#65. The U.S. district

court reopened the case but only to appeal the Order and judgment. *Id.*, CR#85.

Kahre, now filing his second appeal from the U.S. district court case, appealed the February 18, 2004 order and judgment of the U.S. district court. *See* Ninth Circuit Case No. 05-15401, *Kahre v. Swiss Casinos of America, Inc., et al.* Kahre asked the Ninth Circuit Court of Appeals to review the U.S. district court decision and sanctions, and determine if the matters raised in his complaint had a basis in law and fact and to determine whether they were frivolous. The Ninth Circuit issued a memorandum decision on January 13, 2006, regarding Kahre's U.S. district court case. The court did not address, consider, or even investigate the substance of Kahre's arguments of fact and law in the district court proceedings, but nevertheless ruled that the district court did not abuse its discretion in ruling on Kahre's district court case. (PA 10a).

On May 25, 2006, the Ninth Circuit denied Kahre's January 31, 2006 petition for rehearing, closed the appeal, and awarded sanctions against Kahre and referred the determination of the amount of sanctions and specific cause for sanctions to Appellate Commissioner, Peter L. Shaw. (PA 7a, 8a). On June 14, 2006, Court of Appeals' Commissioner, Peter L. Shaw, awarded Respondent Nevada State Bank and R. Gardner Jolley attorney fees in the sum of $14,430 plus double costs in the sum of $521.40. (PA 3a-6a). The only legal premise given for the U.S. district court's dismissal of Kahre's action, as well as the Ninth Circuit's dismissal of Kahre's appeal and the sanctions awarded against him, was stated by the Appellate Commissioner to be the lower courts alleged lack of subject-matter jurisdiction under the *Rooker-Feldman* doctrine. (PA 3a-4a).

On or about June 28, 2006, Kahre moved the Ninth Circuit to reconsider and reverse the court's orders and

judgments, including those imposing sanctions, upon the facts of the case that were clearly before the court, and also upon the determinations of this Supreme Court in *Exxon Mobile Corp. v. Scudi Basic Industries Corp.*, 544 U.S. 280 (2005) and in *Lance v. Dennis*, 546 U.S. ____, 126 S.Ct. 1198 (2006). Kahre asserted that the law of these cases and the facts of his case, that were clearly before the Court, precluded the use of *Rooker-Feldman* as a premise to deny him access to the Federal Courts under the laws of the United States and as a basis and premise to award attorneys fees and sanctions to the Respondents. On July 7, 2006, the Ninth Circuit Court of Appeals, being duly apprised of and in open defiance of the facts and the law, denied Kahre's motion to reconsider and affirmed its orders and both the U.S. district court's and its own sanctions against Kahre. This order precluded Kahre from submitting any further motions in the Court of Appeals and appears to be the final appealable order of the case. (PA 1a-2a).

SUMMARY OF THE ARGUMENT

Respondents, Swiss Casinos, AG, and its subsidiaries. Swiss Casinos of America, Seven Circles Resorts, and The Resort, owned, and were developing and managing a luxury resort and casino in Las Vegas, Nevada that went bankrupt. Through and with the permission of the Bankruptcy Court, Respondents commenced and maintained numerous parallel civil actions against construction contractors and creditors in both the State and federal courts in Nevada. Petitioner Kahre was mentioned in Respondents' civil complaint(s) but was not served with process and was not named as or made a party to these lawsuits.

Kahre, as a nonparty, commenced an action in U.S. district court against the Respondents for violating his rights to

due process and to privacy while Respondents' parallel state and federal civil litigation was still pending. Respondents had secretly subpoenaed and obtained confidential information regarding Kahre from banks, armored car services, and others. The confidential information that was solicited, inspected and publicly disseminated by The Resort included, but was not limited to, social security numbers and taxpayer return information regarding Kahre. The specific taxpayer return information that was being solicited, and thereafter inspected and disclosed if acquired, included Currency Transaction Reports (CTRs), Suspicious Activity Reports (SARs), and other information filed with and kept by the Internal Revenue Service (IRS).

Kahre was not a creditor in The Resort bankruptcy proceedings and was not named as or made a party to *any* of The Resort's parallel and pending civil litigation cases. As such, there was no final judgment against Kahre or even the possibility of judgment against Kahre when Kahre commenced his action against the Respondents in the U.S. District Court under the Constitution, laws and treaties of the United States. These facts clearly preclude any possible application of the *Rooker-Feldman* doctrine to Kahre's U.S. district court action according to the controlling law issued out of this Court. *See Lance v. Dennis*, 546 U.S. ____, 126 S.Ct. 1198 (2006); *see also Exxon Mobile Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280 (2005).

Nevertheless, the district court and the Ninth Circuit court of appeals erroneously applied the *Rooker-Feldman* doctrine to Kahre's case, and abused their discretion by dismissing Petitioner's federal suit and appeal under a clearly erroneous and unauthorized expansion of the *Rooker-Feldman* doctrine, and then by ordering Petitioner to pay Respondents' attorneys fees and sanctions totaling almost $55,000. In fact, the Ninth Circuit Appellate Commissioner's only statement as

to the basis for the U.S. district court's dismissal of Kahre's action, and the basis of the sanctions imposed upon Kahre on appeal, was the clearly erroneous application of the *Rooker-Feldman* doctrine.

The U.S. district court ruled that Kahre's U.S. district court action was frivolous and without basis in fact and law, but did so upon a clearly erroneous application of the *Rooker-Feldman* doctrine, and upon two cases that were not even before the court. Furthermore, the U.S. district court's other bases for sanctioning Kahre provided no reasonable basis for sanction. The Ninth Circuit Court also affirmed the U.S. district court's orders and sanctions without addressing or examining in any manner the substance of Kahre's Complaint, filings, arguments, or legal position in the U.S. district court case at issue, and while relying on the utterly flawed and erroneous application of the *Rooker-Feldman* doctrine.

THE ARGUMENT

I. Introduction.

In this case, the lowers Courts have effectively voided the laws of the United States, usurped the powers of Congress, and have enter orders and judgments that conflict with this Supreme Court's determinations and warnings regarding the lower courts' use and abuse of the *Rooker-Feldman* doctrine. *See* Sup. Ct. R. 10(c).

Supreme Court decisions must be followed by the lower courts, no matter how misguided the lower court judges may imagine the Supreme Court opinion to be. *See Hutto v. Davis*, 454 U.S. 370, 377-375 (1982).

> More importantly, however, the Court of Appeals could be viewed as having ignored,

> consciously or unconsciously, the hierarchy of the federal court system created by the Constitution and Congress. . . But unless we wish anarchy to prevail within the federal judicial system, a precedent of this Court must be followed by the lower federal courts no matter how misguided the judges of those courts may think it to be. *Id.* at 374-375.

In this case, the U.S. district court and Ninth Circuit court decisions stand in conscious and open defiance of this principle. The facts of this case, the law, and this Supreme Court's decisions in *Exxon Mobile Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280 (2005) and in *Lance v. Dennis*, 546 U.S. ____, 126 S.Ct. 1198 (2006) all stand in direct opposition to the opinions and judgments of the courts below. Kahre's suit in the U.S. District Court, District of Nevada was commenced on February 11, 2002, under 28 U.S.C. § 1331 and 26 U.S.C. § 7431. The Complaint alleges that the Respondents violated Kahre's right to due process and his rights to privacy via, *inter alia*, the unlawful solicitation, inspection, and public dissemination of his return and return information. (PA 45a-49a ¶¶ 80-83, 170, 175, 180); *see also* 26 U.S.C. § 6103. The Complaint also alleges the violation of the current Swiss-U.S. Treaty, Senate Treaty Document 105-8, 105th Congress, 1st Session, and 26 U.S.C. 6103(k)(4). (PA 45a-46a ¶81-83, 59a-60a ¶218). Original jurisdiction lies in the Federal Courts.

On June 14, 2006, with the court records and evidence before him, Ninth Circuit Court of Appeals' Commissioner, Peter L. Shaw, entered the Ninth Circuit's order that found that "[t]he district court dismissed Kahre's action for lack of subject matter jurisdiction under the Rooker-Feldman doctrine." (PA 3a).

On July 7, 2006, the Ninth Circuit affirmed the Appellate Commissioner's Order and judgment. (PA 1a-2a). This Ninth Circuit order and judgment was a clear abuse of

discretion based on, *inter alia*, an utterly flawed application of the *Rooker-Feldman* doctrine. The Respondent casino enterprise had pending parallel civil litigation in both the State and Federal courts when Kahre commenced his action. Kahre was not a party to any of that underlying parallel litigation and no judgment was ever entered against him, thus rendering the *Rooker-Feldman* doctrine inappropriate and inapplicable. *See Exxon Mobile Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280, 287 (2005); *see also Lance v. Dennis*, 546 U.S. ____, 126 S.Ct. 1198, 1202 (2006).

In the U.S. district court proceedings, the Respondents filed Fed. R. Civ. P. 12(b) motions to dismiss Kahre's complaint. When considering a motion to dismiss for failure to state a claim upon which relief can be granted, all material allegations in the complaint are to be accepted as true and are construed in the light most favorable to the non-moving party. *See Barnett v. Centoni*, 31 F.3d 813, 816 (9th Cir. 1994); *Russell v. Landrieu*, 621 F.2d 1037, 1039 (9th Cir. 1980). For the movant to succeed, it must appear beyond doubt that plaintiff will not be entitled to relief under the facts alleged in the complaint. *See Rothman v. Vedder Park Mgt.*, 912 F.2d 315, 316 (9th Cir. 1990). As such, the following facts are to be considered as true and are undisputed:

1. Respondents commenced parallel civil litigation cases in both the State and Federal courts in Nevada. (PA 40a ¶¶ 46, 47).
2. Respondents' parallel civil litigation cases in both the State and Federal courts were pending when Kahre commenced his lawsuit. (PA 40a ¶¶ 46, 47; 41a-44a ¶ 64).
3. Kahre was not a named party to Respondent casino enterprises' civil lawsuits. (PA 41a ¶54).
4. Kahre was not served with legal process. (PA 41a-44a ¶¶54, 64).

5. Respondents' counts and claims, where Kahre and two of his sole proprietorship were merely mentioned, were dismissed in their entirety with prejudice. (PA 41a ¶51, 74a-77a).
6. There was no State Court "judgment" entered against Kahre that the U.S. district court was requested to review.

II. The Rooker-Feldman Doctrine Is Not Applicable To Kahre's Case.

The Ninth Circuit's order of June 14, 2006 states that:

> The district court dismissed Kahre's action for lack of subject matter jurisdiction under the Rooker-Feldman doctrine. (PA 3a).

This Supreme Court's determination in *Exxon Mobile* is clear and unambiguous:

> The Rooker-Feldman doctrine, we hold today, is confined to cases of the kind from which the doctrine acquired its name: "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobile Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280, 284 (2005) (emphasis added).

Based upon the fact of Kahre's U.S. district court case, the Rooker-Feldman doctrine was simply inapplicable. In *Lance v. Dennis*, this Court further qualified this principle and the limitation placed upon the use of the *Rooker-Feldman* doctrine.

> In the case before us, plaintiffs were plainly not parties to the underlying state-court proceeding in *Salazar*....The four citizen-plaintiffs here did not participate in *Salazar*, and were not in a "position to ask this Court to review the state court's judgment." *See De Grandy, supra*, at 1066, 114 S. Ct. 2647, 129 L.Ed.2d 775; *see Karcher v. May*, 484 U.S. 72, 77, 108 S.Ct. 388, 98 L.Ed.2d 327 (1987) ("The general rule [is] that one who is not a party or has not been treated as a party to a judgment has no right to appeal therefrom.)." (emphasis added). *Lance v. Dennis*, 546 U.S. ____, 126 S.Ct. 1198, 1202 (2006) (emphasis added).

There was no "state-court judgment" against Kahre in the underlying parallel cases. As such, there was no "state-court judgment" before the U.S. District Court and there was no "state-court judgment" for Kahre to even take an appeal from. Rooker-Feldman had no application to Kahre's U.S. district court proceeding. This Court in *Exxon Mobile* went on to explain that:

> Since *Feldman*, this Court has never applied *Rooker-Feldman* to dismiss an action for want of jurisdiction. The few decisions that have mentioned *Rooker* and *Feldman* have done so only in passing or to explain why those cases did not dictate dismissal....Johnson v. De Grandy, 512 U. S. 997, 1005-1006, 129 L.Ed.2d. 775, 114 S.Ct. 2647 (1994) (*Rooker-Feldman* bars a losing party in state court "from seeking what in substance would be appellate review of the state judgment in a United States district court, based on the losing party's claim that the state judgment itself violates the loser's federal

> rights," but the doctrine has no application to a federal suit brought by a nonparty to the state suit.)" (emphasis added). *Exxon Mobile*, 544 U.S. at 287.

Despite this clear language, the U.S. district court dismissed Kahre's U.S. district court case and sanctioned Kahre, and the Ninth Circuit dismissed Kahre and further sanctioned him, based upon what was an obvious misapplication of the *Rooker-Feldman* doctrine. Directly in line with *Exxon Mobile*, Kahre was a nonparty to The Resort's state and federal court litigation. Kahre was not a named party in the Respondent casino enterprises' parallel civil litigation lawsuits that were still pending in both the State and Federal Courts at the time when Kahre commenced his action. Kahre was not served with any legal process by these same Respondents in those civil cases and there was no "judgment" against Kahre. (PA 41a-44a ¶¶54, 64). Nevertheless, the Ninth Circuit court found and affirmed, contrary to this Court's holding in *Exxon Mobile*, that: "[t]he district court dismissed Kahre's action for lack of subject matter jurisdiction under the Rooker-Feldman doctrine." (PA 3a). The U.S. district court also based its primary argument for dismissal of Kahre's action upon the *Rooker-Feldman* doctrine. (PA 27a-29a). The U.S. District Court had jurisdiction under 28 U.S.C. 1331 and 26 U.S.C. 7431. (PA 40a ¶¶1-3).

The *Rooker-Felman* doctrine simply did not and does not apply to Kahre's U.S. district court action.

> When there is parallel state and federal litigation, *Rooker-Feldman* is not triggered simply by the entry of judgment in state court. This Court has repeatedly held that "the pendency of an action in the state court is no bar to proceedings concerning the same matter in the Federal court

> having jurisdiction." (citations omitted)(emphasis added). *Exxon Mobile*, 544 U.S. at 292.

The Respondents' casino enterprise had pending civil litigation in both the state and Federal District Court when Kahre commenced his action. (PA 40a ¶46, 47, 41a-44a ¶64, 74a-77a). This pending parallel state and federal litigation provided not basis for a dismissal of Kahre's district court case based upon the *Rooker-Feldman* doctrine. The facts of this case are clear. There was no "state-court judgment" against Kahre or any of his sole proprietorships. Neither Kahre nor any of his sole proprietorships were a party to The Resort lawsuits in state, federal, or bankruptcy court. Kahre and his sole proprietorships were not served with process, and parallel civil litigation was still pending in the State and Federal courts when Kahre commenced his action. This Court's stern admonishment in *Lance v. Dennis* is particularly applicable in this case.

> In *Exxon Mobile*, decided last Term, we warned that the lower courts have at times extended *Rooker-Feldman* "far beyond the contours of the Rooker and Feldman cases, overriding Congress' conferral of federal-court jurisdiction concurrent with jurisdiction exercised by state courts, and superseding the ordinary application of preclusion law pursuant to 18 U.S.C. §1738." .... *Rooker-Feldman*, we explained, is a narrow doctrine, confined to "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review or rejection of those judgments." . . .
>
> Although we have never addressed the precise question before us, we have held *Rooker-Feldman*

> inapplicable where the party against whom the doctrine is invoked was not a party to the underlying state-court proceeding. *Lance v. Dennis*, 126 S.Ct. at 1201 (emphasis added) (citations omitted).

This Supreme Court went on to say that:"The *Rooker-Feldman* doctrine does not bar actions by nonparties to the earlier state-court judgment simply because, for the purposes of preclusion law, they could be considered in privity with a party to the judgment." *Id.* at 1202 (emphasis added). Thus, even if Kahre was in some way in privity with Respondents, which is strictly denied, and even if there was some judgment in the state court proceedings that related to Kahre, which there was not, the *Rooker-Feldman* doctrine would still be inapplicable.

With due regard for the facts and the law, *Rooker-Feldman* does not apply to Kahre's suit. Congress conferred subject matter jurisdiction of Kahre's case under 28 U.S.C. § 1331 and 26 U.S.C. § 7431. The U.S. District Court opinion and the Ninth Circuit Court of Appeals opinions and judgments fly in the face of this Court's warnings and admonitions regarding extension of the *Rooker-Feldman* doctrine. The use of *Rooker-Feldman* to dismiss Kahre's suit and to sanction Kahre for nearly $55,000 is wholly unwarranted and abusive.

III. The Sanctions Levied Against Kahre Are An Abuse Of Discretion.

The award of attorneys fees and costs in the Federal District Court is governed by Fed. R. Civ. P. 11, while the award of attorneys fees and costs in the Court of appeals is governed by Fed. R. App. P. 38. Sanction issues are considered as a related but separate proceeding. As noted by this Supreme

Court, the Ninth Circuit court should have applied, and did not apply, a proper abuse-of-discretion standard, and should have reviewed all aspects of a district court's Rule 11 proceedings and sanctioning of Kahre. Contrary to this Court's admonitions, it did no such thing:

> If the appeal of a Rule 11 sanction is itself frivolous, Rule 38 gives appellate courts ample authority to award expenses. Indeed, because the district court has broad discretion to impose Rule 11 sanctions, appeals of such sanctions may frequently be frivolous.... ("[W]here an appeal challenges actions or findings of the district court to which an appellate court gives deference by judging under an abuse of discretion or clearly erroneous standard, the court is more likely to find that the appellant's arguments are frivolous"). If the appeal is not frivolous under this standard, Rule 38 does not require the appellee to pay the appellant's attorney's fees....Rules 11 and 38 are better read together as allowing expenses incurred on appeal to be shifted onto appellants only when those expenses are caused by a frivolous appeal, and not merely because a Rule 11 sanction upheld on appeal can ultimately be traced to a baseless filing in district court." *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 407 (1990) (emphasis added)(citations omitted).

The original sanctions awarded against Kahre by the U.S. district court were unjustified, and nothing in the record of Kahre's appeal indicates that the Ninth Circuit actually reviewed and addressed the merits of the U.S. district courts awarding of sanctions against Kahre, or in any way even

investigated whether or not Kahre original action and his appeal therefrom was in any way frivolous or had a basis in law. In contravention to the prohibitions in *Cooter & Gell*, the Ninth Circuit sanctioned Kahre on appeal merely by tracing his appeal back to an allegedly frivolous filing in the district court. What is worse is that it did this without even determining whether any action or filing by Kahre in the his district court action was actually frivolous. The full extent of the Ninth's Circuits "review" of the sanction's imposed against Kahre by the U.S. district court was the blank statement in its January 13, 2006 memorandum decision that,

> On more than one occasion the district court determined that Kahre's claims were frivolous, without merit, and filed in bad faith. . . . Under the circumstances, the district court did not abuse its discretion in imposing sanctions against Kahre. (PA 10a) (citations omitted).

Thus, the Ninth Circuit made absolutely no review of the sanctions against Kahre that were the subject of his appeal. It made no review of the U.S. district court record to determine whether any of Kahre's filings in the U.S. district court were actually frivolous or sanctionable. The Ninth Circuit's record contains not a single order that in any way address the substance or merits of his original district court action or his appeal in relations to any alleged "frivolousness." The Ninth Circuit merely recounted the U.S. district court's determination and made no independent assessment or determination on the substance of any of Kahre's filing or argument in the U.S. district. The Ninth Circuit then addressed the U.S. district court's process of entering a pre-filing review order against Kahre, again without considering the substance of Kahre actual filing in the U.S. district court:

> The district court also did not abuse its discretion in entering a pre-filing review order against Kahre because he had notice that the district court was considering entering such an order and had an opportunity to oppose it. . . . In addition, the district court specifically identified numerous filings by Kahre that the district court found to be frivolous and without merit and the order is narrowly tailored to "prevent infringement on [Kahre's] right of access to the courts." (PA 10) (citations omitted).

It is important to note that the "numerous filings by Kahre" referred to above were not from the case at bar before the U.S. district court, but were from two other state and federal actions Kahre had been involved in going back to 1993. (PA 14a-19a). The Ninth Circuit's utter failure to review any of Kahre's filings for actual "frivolousness," whether in the U.S. district Court or the Ninth Circuit court, is blatant and plainly visible.

The clearest evidence of the Ninth Circuit's utter lack of review in Kahre's appeal is in the final statement of its January 13, 2006 order,

> We do not consider Kahre's contentions regarding the underlying judgment. *Id.* (citations omitted).

The only relevant "underlying judgment" in the U.S. district court record was the judgment granting the very sanctions Kahre was appealing. (PA 21a-22a).

Instead of actually reviewing the original sanctions against Kahre, the Ninth Circuit merely reviewed the *process* the district court used in sanctioning Kahre, and did not in any way examine the facts, law, or merits of Kahre's original action

that was allegedly frivolous. Furthermore, the Ninth Circuit based its sanctions on appeal against Kahre's upon his allegedly frivolous filings in the U.S. district court proceedings, which it did not evaluate or review, and which were largely based upon an utterly flawed application of the *Rooker-Feldman* doctrine.

The only premise found and stated for the dismissal of Kahre's case in the U.S. district court, and as the basis for sanctions, was that: "[t]he district court dismissed Kahre's action for lack of subject matter jurisdiction under the Rooker-Feldman doctrine." (PA 3a). As stated by this Supreme Court in *Exxon Mobile*, 544 U.S., at 287, "this Court has never applied Rooker-Feldman to dismiss an action for want of jurisdiction." The relevant facts and evidence presented by Kahre precluded the use of the *Rooker-Feldman* doctrine to evade the laws and treaties of the United States and to prejudice Kahre's rights.

Neither Kahre's Complaint nor his appeal were frivolous. Kahre was not given the opportunity to pursue his claims relating to 26 U.S.C. §§ 6103 and 7431. Even by a Fed. R. Civ. P. 11(b) standard, Kahre's U.S. district court Complaint had ample basis in "existing law" or a "nonfrivolous argument for the extension modification, or reversal of existing law" to argue for the privacy of his federal returns and return information under 26 U.S.C. § 6103 and other law. *See e.g.*, *Scrimgeour v. IRS*, 149 F.3d 318 (4th Cir. 1998) (IRS found liable under 26 U.S.C. § 7431 for producing tax returns and other items protected under 26 U.S.C. § 6103 to private attorney who filed an IRS Form 4506 in the name of a third party); *see also In re Umback*, 350 P.2d 299 (Okla., 1960) (federal return information was held to be privileged and was not subject to discovery unless the individual was a named party in the action); *see also Heathman v. U.S. District Court for the Central District of California*, 503 F.2d 1032, 1035-1037 (9th Cir. 1974)(Chamber, J., dissenting) (applying the protections of

26 U.S.C. § 6103 to returns of individual taxpayers, and prohibiting their production in response to discovery). (PA 40a ¶3).

The Ninth Circuit's January 13, 2006 memorandum decision concerning Kahre's appeal of the U.S. district court's sanctions purported to review those sanctions, but completely and utterly failed to examine in any manner the substance of Kahre's factual and legal position in his U.S. district court action, or to determine whether or not Kahre's original action was frivolous or had a basis in law. The totality of the Ninth Circuit's "review" consisted of a bare rubber-stamp regurgitation of the U.S. district court's actions, and not examination of the facts and law presented by Kahre, or whether or not they provided any basis for such sanctions.

On May 25, 2006 the Ninth Circuit court awarded sanctions against Kahre for his appeal, without stating a specific cause or the standards to be used. (PA 8a). The Ninth Circuit panel left the amount of the sanctions and the cause for sanctions to be determined by Appellate Court Commissioner, Peter Shaw. *Id.* On June 14, 2006, the Appellate Commissioner once again deferred solely to the trial court's order and opinion and the only stated legal or factual basis for the sanctions levied against Kahre for his appeal was the "Rooker-Feldman doctrine," and the Appellate Commissioner's made not a single statement as to whether or how Kahre's appeal was frivolous. (PA 3a-4a). This method of review for sanctions, or rather the lack of review, is contrary to the holdings of this Court as expressed in *Cooter & Gell*:

> Determining whether an attorney has violated Rule 11 involves a consideration of three types of issues. The court must consider factual questions regarding the nature of the attorney's prefiling inquiry and the factual basis of the pleading or

> other paper. Legal issues are raised in considering whether a pleading is "warranted by existing law or a good faith argument" for changing the law and whether the attorney's conduct violated Rule 11. Finally, the district court must exercise its discretion to tailor an "appropriate sanction." *Cooter & Gell*, 496 U.S. at 399 (emphasis added).
>
> * * *
>
> When an appellate court reviews a district court's factual findings, the abuse-of-discretion and clearly erroneous standards are indistinguishable: A court of appeals would be justified in concluding that a district court *had abused its discretion in making a factual finding only if the finding were clearly erroneous. Id.* at 401 (emphasis added).

The U.S. district court and the Ninth Circuit court utterly failed to conduct such an inquiry as to Kahre's actions at the district court or appellate court levels, but nevertheless levied sanctions against him based almost exclusively upon Kahre's various other litigation not before the court, and upon a completely erroneous application of the *Rooker-Feldman* doctrine. (PA 3a, 14a-19a, 27a-29a). The Ninth Circuit court's lack of inquiry and reliance on incorrect legal basis is particularly glaring in the context of this Court's holding in *Cooter & Gell*:

> Of course, this standard would not preclude the appellate court's correction of a district court's legal errors, e. g., determining that Rule 11 sanctions could be imposed upon the signing attorney's law firm, ... or relying on a materially

> incorrect view of the relevant law in determining that a pleading was not "warranted by existing law or a good faith argument" for changing the law. An appellate court would be justified in concluding that, in making such errors, the district court abused its discretion. "If a district court's findings rest on an erroneous view of the law, they may be set aside on that basis." *Pullman-Standard v. Swint*, 456 U.S., *supra*, at 287. *See also Icicle Seafoods, Inc. v. Worthington, 475 U.S. 709, 714 (1986). Id.* at 402. (Emphasis added).

Of course, in this discussion, this Court is assuming that the appellate court would make *some* inquiry into the legal and factual details of the petitioners district court action, which is utterly absent in this case.

The Ninth Circuit court based its determination upon the premise that Kahre's U.S. district court action was dismissed based upon the Rooker-Feldman doctrine, which is clearly erroneous based on the actual facts of the case. (PA 3a). Kahre was not a party to the Respondents' underlying and pending parallel civil litigation in the state and federal courts when he commenced his action and there was no judgment entered against him in any of those cases. This was reiterated and pointed out to the Ninth Circuit court. Kahre had a firm legal and factual basis to pursue his original U.S. district court action under 28 U.S.C. § 1331, 26 U.S.C. §§ 7431 and 6103. Kahre relied on valid case law applied to a an utterly outrageous and novel factual situation. *See Heathman v. U.S. District Court for the Central District of California*, 503 F.2d 1032, 1035-1037 (9th Cir. 1974); *Scrimgeour v. IRS*, 149 F.3d 318 (4th Cir. 1998); *In re Umback*, 350 P.2d 299 (Okla., 1960). Neither Kahre's district court case nor his appeal therefrom were frivolous in any manner, and nothing in the records of either

action support the sanctions awarded against him or in any way indicated upon any valid basis that Kahre's filings were frivolous or had insufficient basis in law so as to warrant sanctions.

In short, the Ninth Circuit court failed to apply the "abuse-of-discretion" standard to Kahre's case, or even to review the legal and factual basis of his U.S. district court Complaint and filings, whose alleged frivolousness was the very subject of the sanctions and the Ninth Circuit appeal and he is asking this Court to review. The facts were clearly stated by Kahre to preclude the use of the *Rooker-Feldman* doctrine, and Kahre's original action and his appeal thereof, were in no way frivolous, and certainly did not warrant $40,000 worth of sanctions by the U.S. district court, and $15,000 by the Ninth Circuit court. The Ninth Circuit case is "abuse-of-discretion," not a review of it.

CONCLUSION

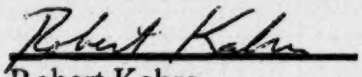
The lower court orders and judgments are in conflict with the limits placed upon *Rooker-Feldman* by this Supreme Court, and fly in the face of controlling holdings concerning review of sanctions. The lower court orders and judgments should be reversed and the case remanded for further proceedings. Therefore, this Petitioner respectfully requests that the petition for writ of certiorari be granted.

Furthermore, and in the alternative, as there is some ambiguity as to whether the January 13, 2006 memorandum decision of the Ninth Circuit court (PA 9a-10a) was indeed a final appealable order, Petitioner respectfully requests that if this petition is denied, this Supreme Court indicate which orders of the Ninth Circuit court of appeals are final and appealable. If the January 13, 2006 memorandum decision is deemed a final

and appealable order, this Petitioner further respectfully requests that this Supreme Court grant Petitioner reasonable time in which to prepare a petition for writ of certiorari that addresses this order.

Dated this 21st day of August, 2006.

Petitioner



Robert Kahre
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APPENDIX A

Relevant Orders, Ninth Circuit Court of Appeals
Case No. 05-15401,
Kahre v. Swiss Casinos of America, Inc., et al.

NINTH CIRCUIT COURT OF APPEALS ORDERS

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ROBERT KAHRE,
Plaintiff - Appellant,

v.

SWISS CASINOS OF AMERICA, INC., et al.,
Defendants - Appellees.

No. 05-15401
D.C. No. CV-02-197-KJD
Nevada (Las Vegas)

ORDER

FILED
JUL 07 2006
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

Before: HUG, O'SCANNLAIN, and SILVERMAN, Circuit Judges.

Appellant Robert Kahre's motion for reconsideration of the Appellate Commissioner's June 14, 2006 order is

denied. The Appellate Commissioner's June 14, 2006 order remains in effect. Accordingly, attorneys' fees in the amount $14,430 and double costs in the amount of$521.40 are awarded against appellant Robert Kahre and in favor of appellees Nevada State Bank and R. Gardner Jo!'ey, Esq. A certified copy of this order sent to the district court shall serve to amend this court's mandate.

No motions for reconsideration, rehearing, clarification, stay of the mandate, or any other submissions by appellant Kahre shall be filed or entertained in this closed docket number.

O:\AppComm\Fees\2005\05-1540 1 Ka\panelorder.wpd

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ROBERT KAHRE,
Plaintiff - Appellant,

v.

SWISS CASINOS OF AMERICA, INC., et al.,
Defendants - Appellees.

No. 05-15401
D.C. No. CV-02-197-KJD
Nevada (Las Vegas)

ORDER

FILED-JUN 14 2006
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

Before: Peter L. Shaw, Appellate Commissioner

I.

Background

Plaintiff-Appellant Robert Kahre ("Kahre") filed a pro se action in the district court challenging a subpoena issued in state court litigation arising from hotel and casino construction. The district court dismissed Kahre's action for lack of subject matter jurisdiction under the *Rooker-Feldman* doctrine. Kahre's appeal from the dismissal order was dismissed by this court as untimely.

The district court also imposed sanctions in the amount of $40,000 and entered a pre-filing review order against Kahre,

and Kahre filed this appeal from the sanctions and pre-filing review orders. This court held that the district court did not abuse its discretion by sanctioning Kahre because the district court

[2] No. 05-15401
repeatedly determined that Kahre's claims were frivolous, without merit, and filed in bad faith. This court also held that the pre-filing review order was not an abuse of discretion because Kahre had notice of the order and an opportunity to oppose it, the district court identified numerous frivolous, unmeritorious filings by Kahre, and the order was narrowly tailored to prevent infringement on Kahre's right of access to the courts. Kahre's petition for rehearing was denied.

Appellees Nevada State Bank and R. Gardner Jolley (together "Appellees") filed a bill of costs on appeal and this court taxed costs against Kahre in the amount of $260.70. Appellees also filed a motion for attorneys' fees, double costs and sanctions against Kahre for filing the frivolous appeal, pursuant to Federal Rule of Appellate Procedure 38 and 28 U.S.C. § 1912. Kahre filed an opposition and Appellees filed a reply. The court awarded sanctions to Appellees, and referred to the Appellate Commissioner the determination of the appropriate amount of the sanction award. The court also prohibited further filings by Kahre in the closed appeal.

[3] No. 05-15401
II.
Analysis

A. Attorneys' Fees

Appellees request attorneys' fees in the amount of $14,430 for 72.4 hours of work by their attorneys. This represents 30 hours of work by R. Gardner Jolley, Esq., at the

rate of $250 per hour and 0.4 hours of work by Jolley at $300 per hour. It also includes 10.4 hours of work by Brian C. Wedl, Esq., at the rate of $150 per hour, 18.6 hours of work by Wedl at the rate of $160 per hour, and 13 hours of work by Wedl at $175 per hour. [5] Appellees claim the attorneys' time was spent as follows:

Description of Services	RGJ	BCW
Interviews & Conferences:	4.2	3.1 hours
Obtaining & Reviewing Records:	8.4	6.0 hours
Legal Research:	16.8	6.1 hours
Preparing Briefs:	12.6	15.2 hours
Total:	42.0	30.4 hours

Appellees filed a 28-page answering brief accompanied by one volume of supplemental excerpts of the record, and a substitute brief correcting the citations

[4] No. 05-15401

to the other appellees' excerpts. Appellees also filed the motion for attomeys' fees and sanctions. There was no oral argument.

Kahre's opposition to Appellees fee motion does not raise any objections to the amount of fees requested. The amount of attorneys' fees awarded under Federal Rule of Appellate Procedure 38 for defending against a frivolous appeal must be reasonable. *See Gaskell v. Weir*, 10 F.3d 626,629 (9th Cir. 1993). A review of the case file and docket reveals that the number of hours requested by Appellees is reasonable.

In addition, Appellees' requested hourly rates are "in line with those [rates] prevailing in the community for similar

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[1]The actual fee total is $14,431; Appellees have rounded the request to $14,430 in their motion. Also, Appellees do not request fees for 0.3 hours of work by Brian E. Holthus, Esq., at the rate of $250 per hour.

services by lawyers [and paralegals] of reasonably comparable skill, experience and reputation." *Blum v. Stenson*, 465 U.S. 886, 895 & n. 11 (1984). Accordingly, Appellees are awarded fees in the amount of $14,430.

B. Double Costs

Appellees request double costs as part of the sanction award. The award of double costs is permitted under Federal Rule of Appellate Procedure 38, and Kahre has not objected to the request. Accordingly, Appellees are awarded double costs in the amount of $521.40.

[5] No. 05-15401

III.

Conclusion

Attorneys' fees in the amount of$14,430 and double costs in the amount of $521.40 are awarded against appellant Robert Kahre and in favor of appellees Nevada State Bank and R. Gardner Jolley, Esq. A certified copy of this order sent to the district court shall serve to amend this court's mandate.[6]

/s/ Peter L. Shaw
9th Cir. R. 39-1.9

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[2]As noted in the court's May 25, 2006 order awarding sanctions, this order is subject to reconsideration by the panel. *See also* 9th Cir. R. 27-10,39-1.9. Any motion for reconsideration filed by Kahre shall not exceed 20 pages. *See* Fed. R. App. P. 27(d)(2). If Kahre files a motion for reconsideration, the Clerk shall forward the motion to the Appellate Commissioner. No filings by Kahre other than a motion for reconsideration of this order shall be accepted by the Clerk in this closed appeal.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ROBERT KAHRE,
Plaintiff - Appellant,

v.

SWISS CASINOS OF AMERICA, INC., et al.,
Defendants - Appellees.
No. 05-15401
D.C. No. CV-02-00197-KJD
Nevada

ORDER

FILED-MAY 25 2006
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

Before: HUG, O'SCANNLAIN, and SILVERMAN, Circuit Judges.

The petition for panel rehearing is denied.

No further filings shall be accepted in this closed appeal.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ROBERT KAHRE,
Plaintiff - Appellant,

v.

SWISS CASINOS OF AMERICA, INC., et al.,
Defendants - Appellees.

No. 05-15401
D.C. No. CV-02-00197-KJD
Nevada (Las Vegas)

ORDER

FILED-MAY 25 2006
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

Before: HUG, O'SCANNLAIN, and SILVERMAN, Circuit Judges.

Appellees are awarded sanctions on appeal. The determination of an appropriate amount of sanctions on appeal is referred to the court's special master, Appellate Commissioner Peter L. Shaw, who shall conduct whatever proceedings he deems appropriate, and who shall have authority to enter an order awarding sanctions. *See* 9th Cir. R. 39-1.9. The order is subject to reconsideration by the panel. *Id.*

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ROBERT KAHRE,
Plaintiff - Appellant,
v.
SWISS CASINOS OF AMERICA, INC., et al.,
Defendants - Appellees.

No. 05-15401
D.C. No. CV-02-00197-KJD
MEMORANDUM*
[162 Fed.Appx. 782, 2005 WL 3128080]

FILED-JAN 13 2006
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

Before: HUG, O'SCANNLAIN, and SILVERMAN, Circuit Judges.

Appeal from the United States District Court for the District of Nevada, Kent J. Dawson, District Judge, Presiding

Submitted Jan. 9, 2006.**

Robert Kahre appeals pro se from the district court's order imposing sanctions and it's pre-filing review order

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*This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

**The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R.App. P. 34(a)(2).

entered against him. We have [2] jurisdiction pursuant to 28 U.S.C. § 1291. We review for abuse of discretion. *Gomez v. Vernon*, 255 F.3d 1118, 1133-34 (9th Cir.2001) (sanctions order); *Moy v. United States*, 906 F.2d 467, 469 (9th Cir.1990) (pre-filing review order). We affirm.

On more than one occasion the district court determined that Kahre's claims were frivolous, without merit, and filed in bad faith. *See Gomez*, 255 F.3d at 1133-34. Under the circumstances, the district court did not abuse its discretion in imposing sanctions against Kahre. *Id.*

The district court also did not abuse its discretion in entering a pre-filing review order against Kahre because he had notice that the district court was considering entering such an order and had an opportunity to oppose it. *See De Long v. Hennessey*, 912 F.2d 1144, 1147 (9th Cir.1990). In addition, the district court specifically identified numerous filings by Kahre that the district court found to be frivolous and without merit and the order is narrowly tailored to "prevent infringement on [Kahre's] right of access to the courts." *Id.* at 1148 (citation omitted).

We do not consider Kahre's contentions regarding the underlying judgment. *See Kahre v. Biggar*, No. 03-15751, 2004 WL 830056 (9th Cir. Apr. 12, 2004) [94 Fed.Appx. 656 (9th Cir.2004)] [3] (unpublished memorandum disposition) (dismissing as untimely Kahre's appeal from the district court's February 27, 2003 judgment).

AFFIRMED.

APPENDIX B
RELEVANT ORDERS AND DOCUMENTS
United States District Court, District of Nevada
Case No. CV-S-02-0197-KJD-(LRL)
Kahre v. Swiss Casinos of America, Inc., et al.

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ROBERT KAHRE,
Plaintiff,
v.

SWISS CASINOS OF AMERICA, INC., et al.,
Defendants

Case No. CV-S-02-0197-KJD (LRL)
ORDER

ENTERED SERVED
FEB 18 2004
CLERK US DISTRICT COURT
DISTRICT OF NEVADA
BY:/s/ DEPUTY

Presently the Court is considering Plaintiff Robert Kahre's Response to Order to Show Cause and Notice of Misprision of Felony (#47). The Court has also reviewed Defendants Swiss [2] Casinos of America, Inc., Swiss Casinos Holding AG; Seven Circle Gaming Corporation; The Resort at Summerlin Limited Partnership; The Resort at Summerlin, Inc.; Lionel Sawyer & Collins, Inc., and Todd M. Touton, Esq.'s ("Swiss Casino Defendants") Request for Recovery of Attorney's Fees and Costs (#45) and Affidavit listing Robert

Kahre's court filings in Nevada State Court and the United States District Court for the District of Nevada (#46). Plaintiff filed an opposition to the request and affidavit (#48, 49), to which Swiss Casinos Defendants replied (#52, 53). Defendants Nevada State Bank and R. Gardner Jolley ("Nevada State Bank Defendants") also responded (#56) to Plaintiff's Response to Order to Show Cause. In their Response, Nevada State Bank Defendants included a list of Robert Kahre's previous actions alleged to be frivolous.

I. BACKGROUND.

This Court's order of February 27, 2003 (#43) dismissed all of Plaintiff's causes of action. Plaintiff's complaint did not have basis in law or in fact. The Court then ordered Defendants to file a pleading and affidavit, including all the cases Plaintiff filed in Nevada state court and U.S. district court, to show why a restrictive order should issue. The Court also ordered Plaintiff to file a statement to show cause why the requested sanctions should not be imposed pursuant to Rule 11 of the Federal Rules of Civil Procedure, 28 U.S.C. § 1927, or the inherent authority of the Court.

II.. ANALYSIS.

A. Sanctions.

Rule 11 states that by filing a complaint the party certifies to the best of its knowledge that, among other things: (l) the complaint is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; (2) the claims are warranted by existing law or by a non-frivolous argument for the extension. modification, or reversal of existing law or the establishment of new law; and (3) the claims are not frivolous. *See* Fed. R. Civ. P. 11(b)(l), (2). A pro se party who signs a pleading has an [3] affirmative duty to conduct a reasonable

inquiry into the facts and the law before filing. *See Salmon v. Rose*, 104 F. Supp. 2d 1255, 1260 (D. Nev. 2000) (quoting *Bus. Guides, Inc. v. Chromatic Communications Enters., Inc.*, 498 U.S. 533, 551 (1991)).

Under its inherent authority, a court has the power to sanction a losing party or its lawyers when it has acted in bad faith, vexatiously, wantonly, or for oppressive reasons as well as for willful abuse of the judicial process. *See Gomez v. Vernon*, 255 F.3d 1118, 1133-34 (9th Or. 2001) (quoting *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 766 1980)). Before imposing inherent-power sanctions, the court must find bad faith or conduct tantamount of bad faith. *See id.* Under its inherent authority, the Court may impose attorneys' fees as a sanction. *See Fink*, 239 F.3d at 991 (quoting Roadway Express, 447 U.S. at 766)).

In his Response to Order to Show Cause (#47), Plaintiff argues why he thinks Rule 11 and 28 U.S.C. § 1927 sanctions are improper. However, Plaintiff simply restates the previous arguments of his underlying case. Notably, Plaintiff fails to address this Court's power to sanction him under its inherent authority.

In arguing why sanctions are inappropriate, Plaintiff states that this Court based its order on erroneous views of the facts and clearly erroneous assessment of the evidence. Plaintiff also asserts his legal position was justified under the law and that his complaint was not frivolous. Plaintiff essentially reargued what he perceived to be the facts and governing law in this case to show that he did not violate Rule 11. However, this Court has previously ruled Plaintiff's case was frivolous and without merit. A restatement of his case in order to show why sanctions should not be issued does not satisfy his burden. Plaintiff did, however, submit a voluminous exhibit entitled "The Huggermugger Report." This anonymous document purportedly substantiates Plaintiff's baseless

assertions. The sixty-two (62) page filing is another example of Plaintiff's waste of judicial resources. Plaintiff fails to authenticate this document.[1] It appears [4] that this "report" is another of Plaintiff's ruses. Plaintiff's arguments in his Response to Order to Show Cause are without merit and frivolous. Even without Rule 11, sanctions could be issued under the inherent authority of the court as Plaintiff's complaint has been brought in bad faith. Pursuant to both Rule 11 and the Court's inherent authority, the Court will sanction Plaintiff a total of $40,000: $20,000 payable to the Swiss Casino Defendants and $20,000 payable to the Nevada State Bank Defendants. These amounts are necessary to cover these Defendants' attorneys fees.

B. Prior Frivolous Filings.

In adherence to the Court's request, Defendants compiled a list of Plaintiff's filings in state and federal court. Plaintiff, though not the most litigious on record, does show a propensity towards frivolity. These frivolous filings have harassed state and federal judges, the United States, the International Monetary Fund, IRS agents, the U.S. Attorney for the District of Nevada, other attorneys, banks and many other corporations and individuals. Although not an exhaustive list of Plaintiff s frivolous filings, the Court presents the following representative examples.[2]

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[1]Moreover, Plaintiff fails to explain why his name dominates so much of the report despite his minor third party status in Defendants' vast conspiracy that spans many states.

[2]The Defendants further support their assertion that Plaintiff has a habit of pursuing frivolous claims by citing the following cases: *Kahre v. United States*, No. CV-S-02-0375-RCJ-LRL, (D. Nev. filed March 18, 2002) (Plaintiff sanctioned $1,500 for describing government's attorney as "(b]eing grossly, corrupt, fraudulent, amoral, unethical, and a prostitute"); *Anderson*

1. Case No. 93-A-323777-C. In October 1993, Plaintiff filed what appears to be his first case against Nevada State Bank. *See People of State of Nev. ex rel. Kahre v. Int'l Monetary Fund*, No. 93-A-323777-C, (Dist. Ct. filed Oct. 5, 1993). In the complaint Plaintiff sued the International Monetary Fund, Nevada State Bank, Remington Homes, Richmond American Homes, Conam Management Corporation and United Construction Company, among many other **[5]** individuals, businesses and governmental entities. Although initially filed in state court, the complaint was later removed to federal court. On January 7, 1994, the Court granted Defendants' motions to dismiss. *See People of State of Nev. ex rel. Kahre v. Int'l Monetary Fund*, No. CV-S-93-1054-PMP-LRL, (D. Nev. Jan. 7,1994). After the Court had entered its order of dismissal, Plaintiff apparently attempted to file an amended complaint in federal court. On December 29, 1994, the Court found that "Plaintiff has demonstrated a propensity to abuse the resources of this court. The instant filing of the Amended Complaint exemplifies this propensity and will not be tolerated." *See id.* No. CV-S-93-1054-LDG-LRL, (D. Nev. Dec. 29, 1994). The Court subsequently had the amended complaint stricken and enjoined Plaintiff from filing any further paper, pleading, or document in this action without first obtaining leave of court. *See id.*

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v. Kahre, No. CV-S-00-1063-PMP~RJJ (D. Nev. May 11, 2001) (dismissing Kahre's claims against IRS agents who had seized his property because he had failed to pay his taxes); *United States Fidelity & Guaranty Co. v. Kahre*, No. CV-S-96-0742-HDM-RJJ (D. Nev. July 16, 1998) (Plaintiff is sanctioned $1,000.00 twice for conduct during the pendency of the case); and *Nev. State Contractors Board v. Kahre*, No. 98-A-382930-C, (Dist. Ct.) (upset with the granting of a discovery motion, Plaintiff served the presiding judge with a subpeona [sic] duces tecum).

After the Court dismissed his original complaint (but before he filed his amended complaint), Plaintiff attempted to resurrect his action in state district court (case no. 93-A323777-C), this time adding Magistrate Judge Leavitt and District Court Judge Pro as defendants. This amended complaint was also removed to federal court on November 17, 1994. *See People of State of Nev. ex rel. Kahre v. Int'l Monetary Fund*, No. CV-S-94-1009-LDG-RJJ (D. Nev. Feb. 16, 1995). The Court, in its order dismissing case no. CV-S-94-1009, reminded Plaintiff that it does not exist to entertain frivolous lawsuits. *See id.* The Court then directed the Clerk of the Court to submit any and all further filings by Plaintiff for review by the assigned judge prior to accepting such documents for filing. *See id.* The Court did not grant sanctions at that time because the original complaint had be filed in state district court. *See id.* Nevertheless, the Court warned Plaintiff that future frivolous filings would result in sanctions. *See id.*

Even though the state case had been twice removed to federal court, Plaintiff continued litigating case No. 93-A-323777-C in state court.[3] Plaintiff continued to amend his complaints, **[6]** which were either removed to federal court or disregarded by the state court. During this time, the state district court repeatedly told Plaintiff that it lacked jurisdiction over his complaint because it had been removed to federal court. Not satisfied with the state district court's decisions, Plaintiff filed a Petition for Writ of Mandamus with the Nevada Supreme Court seeking an order compelling the state district court to assume jurisdiction over case no. 93-A323777-C. In October of 1995, The Nevada Supreme Court found the petition

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[3]Apparently, the state court, instead of closing the state action after it was removed, allowed the case to remain open. This accorded Plaintiff the opportunity to file several amended complaints as well as pursue the case in both the state and federal fora with relative impunity.

to be entirely frivolous and a waste of its precious time and resources. *See People of the State of Nev. ex rel. Kahre v. The Eighth Jud. Dist. Ct. of the State of Nev.*, No. 27521, 111 Nev. 1728 (Oct. 4, 1995) (unpublished). The court cautioned Plaintiff that it would not hesitate to hold him in contempt should he submit any further frivolous pleadings for filing. *See id.*

While his mandamus petition was pending before the Nevada Supreme Court, Plaintiff appealed the order removing to federal court one of the many incarnations of his state case. In November 1995, the Nevada Supreme Court dismissed the appeal for lack of jurisdiction. *See People of the State of Nev. ex rel. Kahre v. Int'l Monetary Fund*, No. 27558, 111 Nev. 1728 (Nov. 21, 1995) (unpublished). In a footnote, the court stated that "This matter also appears to be frivolous." *See id.*[4]

Disregarding the warnings of the Nevada Supreme Court, on September 1, 1998, Plaintiff filed another amended complaint in state case No. 93-A-323777-C that purportedly consisted of 100 pages and naming as defendants over 48 individuals including federal judges and local attorneys as well as 99 Does. The state district court dismissed the amended complaint. *See People of the State of Nev. ex rel. Kahre v. Int'l Monetary Fund*, No. 93-A-323777-C, (Dist. Ct. [7] Oct. 10, 1998). Later, pursuant to motions of other defendants, the state district court finally closed the state case. *See id.* (Dist. Ct. Nov. 30, 1998). The court sanctioned Plaintiff by ordering him to pay attorneys fees in the amounts of $500.00 and $1,000.00

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[4]The Nevada Supreme Court did not sanction Plaintiff as threatened almost two months earlier, because he had already filed his notice of appeal in case no. 27558 when the court had denied his mandamus petition in case no. 27521. Nevertheless, the court cautioned Plaintiff that it would not allow him to burden the court with further frivolous pleadings and abuse the processses [sic] of the court without imposing appropriate sanctions.

depending on the Defendant. *See id.* The court also permanently enjoined Plaintiff from filing any papers or pleadings in the case. *See id.* The Plaintiff appealed these orders to the Nevada Supreme Court as well as filed a petition for writ of mandamus. In its order, the Nevada Supreme Court found that Plaintiff had submitted additional frivolous papers, pleadings and documents in this matter despite its previous warnings. *See People of the State of Nev. ex rel. Kahre v. Int'l Monetary Fund*, Nos. 33419, 33601,33684, 111 Nev. 566 (March 8, 1999) (unpublished). The court dismissed the appeals and denied the mandamus petition. *See id.* The court also sanctioned Plaintiff $3,000.00, permanently enjoined Plaintiff from submitting for filing any papers, pleadings or documents, and directed the clerk of the Nevada Supreme Court to return to Plaintiff any further papers, pleadings or documents he may attempt to file later. *See id.* This appears to be the last time Plaintiff attempted to litigate the merits of the case no. 93-A-323777-C.

2. Case No. 00-A-423872-C. On September 5, 2000, Plaintiff filed a new complaint in state district court naming Nevada State Bank as well as seven others as defendants. His complaint was dismissed as to four banks, one of which was Nevada State Bank. *See Kahre v. Super Commercial Realty Group*, No. 00-A-423872-C, (Dist. Ct. Nov. 2, 2000). After Plaintiff filed for reconsideration, the Court denied the motion and granted sanctions of $1 ,000.00 to each of the four banks. *See id.* (Dist. Ct. Feb. 13, 2001).

Plaintiff's frivolous lawsuits have cost numerous defendants and courts, both state and federal, precious time and resources. For the purpose of making sure Plaintiff does not further waste this Court's time, the Court will enjoin him from submitting additional papers, documents or pleadings in relation to this case without having first received leave of court. Moreover, the Court enjoins Plaintiff from filing suit against

any of the named Defendants in the instant action without first receiving leave of court. In an effort to narrowly enjoin Plaintiff, this injunction [8] will not prohibit him from perfecting the appeal in this case currently before the Ninth Circuit or from litigating claims currently pending before this Court in other cases. The Court agrees with Defendants that based on past experience it appears doubtful that Plaintiff will acquire the skills necessary to distinguish between a frivolous action and a non-frivolous one. The Court recognizes the gravity behind such an order as it restricts a pro se's access to the judiciary system. However, courts have the power to so enjoin vexatious litigants from filing future frivolous, unsubstantiated, harassing actions. *See DeLong v. Hennessey*, 912F.2d 1144,114647 (9th Cir. 1990). Based on past experience, monetary sanctions have been ineffective in dissuading Plaintiff from filing and litigating frivolous claims.

III. CONCLUSION.

Accordingly, IT IS HEREBY ORDERED that by failing to showing cause why he should not be sanctioned, Plaintiff is sanctioned in the amount of $40,000.00 of which $20,000.00 is payable to the Nevada State Bank Defendants and $20,000.00 is payable to the Swiss Casinos Defendants. These sums reflect attorneys fees and sanctions.

IT IS FURTHER ORDERED that Plaintiff is enjoined from filing any further paper, pleading or other document in case no. CV-S-02-0197-KJD-LRL without first obtaining leave of court.

IT IS FURTHER ORDERED that Plaintiff is enjoined from filing any new action against the Defendants named in the instant case without first obtaining leave of court. This injunction does not bar Plaintiff from perfecting his appeal in this case or from litigating claims currently pending before the Court in different cases.

DATED this 13th day of February, 2004.

/s/
Kent J. Dawson
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ROBERT KAHRE,
Plaintiff,
v.

SWISS CASINOS OF AMERICA, INC., et al.,
Defendants.

Case No. CV-S-02-0197-KJD (LRL)
JUDGEMENT IN A CIVIL CASE

___ Jury verdict. This action came before the jury for trial by the Court. The issues have been tried and the jury has rendered it's [sic] verdict.

_X_ Decision by Court. This action came before the Court and a decision has been rendered.

IT IS ORDERED AND ADJUDGED: Plaintiff is sanctioned in the amount to $40,000.00, of which $20,000.00 is to be paid to Swiss Casinos Defendants and $20,000.00 is to be paid to Nevada State Bank Defendants. These sums include both sanctions and attorney's fees.

February 18th, 2004
Date

Lance S. Wilson
Clerk

/s/
(By) Deputy Clerk

ENTERED SERVED
FEB 18 2004

CLERK US DISTRICT COURT
DISTRICT OF NEVADA
BY:/s/ DEPUTY

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ROBERT KAHRE,
Plaintiff,

v.

SWISS CASINOS OF AMERICA, INC., et al.,
Defendants

Case No. CV-S-02-0197-KJD (LRL)
ORDER

ENTERED SERVED
FEB 27 2003
CLERK US DISTRICT COURT
DISTRICT OF NEVADA
BY:/s/___ DEPUTY

[2] Presently, the Court has before it Motion to Dismiss or in the Alternative, for Summary Judgment filed by Defendants Swiss Casinos of America, Inc. ("Swiss Casinos"); Seven Circle Gaming Corporation ("Seven Circle Gaming"); The Resort at Summerlin Limited Partnership ("RASLP"); The Resort at Summerlin, Inc. ("RASI"); Lionel, Sawyer & Collins, Inc. ("LS&C"); and Todd M. Touton, Esq. ("Touton"). These Defendants later filed a Notice of Adoption of Motion to Dismiss or in the Alternative for Summary Judgment Filed in regard to Plaintiff's Original Complaint as Motion to Dismiss or in the Alternative for Summary Judgment in regard to Plaintiffs First Amended Complaint (#10). Plaintiff filed a response in opposition (#14), to which Defendants replied (#17). The Court has also considered Plaintiff's Supplemental

Objection to Defendants' Motion to Dismiss or in the Alternative for Summary Judgment and Objection to Incomplete Certificate Require[d] by LR 10-6 (#19); Defendant Swiss Casinos Holding AG's ("Swiss Casinos AG") Opposition to Plaintiff's Application for Default & Notice of Adoption of Motion to Dismiss or in the Alternative for Summary Judgment Filed in Regard to Plaintiff's Original and Amended Complaints (#21, 22); Defendants' Supplemental Reply to Plaintiff's Objections (#23); Plaintiffs Motion for Ex Parte Court Order Directing Defendant Swiss Casinos AG to Answer the First Amended Complaint or in the Alternative for Entry of Default against Defendant (#25); Defendant Swiss Casinos AG's Opposition to Plaintiffs Ex Parte Motion (#29); and Plaintiff's Reply to Swiss Casinos Holdings AG's Opposition to Plaintiff's Motion for Ex Parte Order (#30).

The Court also has before it Defendant State Court Discovery Commissioner Thomas Biggar's ("Biggar") Motion to Dismiss (#5) and Resubmission of his Motion to Dismiss (#9). Plaintiff filed a response in opposition (#16), to which Defendant Biggar replied (#20). The Court has also considered Plaintiff's Supplemental Objection to Defendant Biggar's Motion to Dismiss and Objection to New Issues Raised by Defendants (#37), Defendant Biggar's Reply to Plaintiff's Supplemental Objection (#39), Plaintiff's Second Supplemental Objection (#40), Defendant Biggar's Reply to Second Supplemental Objection (#41), and Plaintiff's Opposition to Defendant Biggar's Reply to Plaintiff's Second Supplemental Objection (#42).

[3] Also before the Court is the Motion of Nevada State Bank ("NSB") and R. Gardner Jolley ("Jolley") to Dismiss Complaint and for Sanctions (#12). Plaintiff filed a response in opposition (# 18), to which Defendants NSB and Jolley filed a reply (#27).

Finally, the Court has before it Defendant state court judge James C. Mahan's ("Mahan") Opposition to Application for Default Judgment and Motion to Dismiss (#31, 32). In response, Plaintiff filed Response to James C. Mahan's Opposition to Plaintiff's Application for Default Judgment and Motion to Dismiss, Opposition to Mahan's Motion to Dismiss and Countermotion for Order Directing James C. Mahan to Answer the First Amended Complaint or in the Alternative for Entry of Default (#33, 34, 35). Defendant Mahan filed a reply (#38).

I. Background.

This case arises out of litigation concerning the construction of the hotel and casino formerly known as The Resort at Summerlin ("The Resort"). Due to cost overruns and lengthy delays, RASI and RASLP, the parent companies of The Resort, were forced to file for Chapter 11 bankruptcy protection. Subsequently, The Resort commenced litigation proceedings in state court (*In re Resort at Summerlin Construction Litigation*, Case No. A412247) against its construction manager, J. A. Jones Construction Co. ("Jones"), and a trade contractor, Performance Contracting, Inc., among others. In this state court action, The Resort asserted various causes of action, including fraud and conspiracy involving money-laundering. During discovery, it appeared that money had been fraudulently diverted from the project through the use of sham invoices and kickbacks. Discovery revealed that monies had been paid on what were conceded to be sham invoices to various fictitious business entities that Plaintiff owned. It appeared that Plaintiff had completed the transactions by transfer into and out of various accounts maintained at Defendant NSB. The amounts of these transactions were of such large magnitude that NSB was required by federal law to prepare currency transaction reports ("CTRs"). NSB disclosed

that it had prepared a significant number of CTRs in relation to Plaintiff's transactions. Because CTRs identify dates of transfers, amounts, transferors [4] and transferees, they were very helpful to The Resort's case against Jones, PCI and others alleged to have conspired to defraud The Resort of substantial sums of money.

Through a series of subpeonas [sic] duces tecum issued by the state court, The Resort requested that NSB produce CTRs pertaining to various entities of Plaintiff for the time period relevant to the construction of The Resort. Although, NSB initially complied with some production requests voluntarily, eventually Defendants Discovery Commissioner Biggar and Judge Mahan had to order further production. By order entered February 11, 2002, the state court concluded that NSB had lost or misplaced certain CTRs requested by The Resort and that these CTRs were not privileged or confidential. Accordingly, the state court ordered NSB to execute an IRS Form 4506 which would cause the IRS to release copies of the requested CTRs directly to The Resort. At all times, NSB informed Plaintiff of The Resort's various requests for production and later even submitted Plaintiff's objections, by letter, to the state court. Plaintiff also sent a letter to NSB, The Resort, and the state court titled "Notice of Intent to Sue" in which he raised many of the privileged and confidentiality arguments that constitute the causes of action in the instant First Amended Complaint now pending before this Court.

Plaintiff's First Amended Complaint alleges that through the state court discovery proceedings, the Defendants violated his rights under the United States Constitution, various federal laws and a treaty between the United States and Switzerland. Count 1-4 allege unlawful solicitations, disclosures, and inspections pertaining to four separate subpeonas [sic] duces tecum. Counts 5,6 & 8 allege inducing others as well as conspiracy to solicit and disclose confidential

information and to violate rights. Count 7 alleges a violation of a treaty between the United States and the Swiss Confederation. Counts 9-11 allege unlawful inspection, solicitation, disclosure, and dissemination of returns, return information and taxpayer return information and defamation. Count 12 seeks attorney's fees.

In their respective motions to dismiss, the Defendants argue, among others things, that the Court lacks subject matter jurisdiction over Plaintiff's complaint pursuant to the *Rooker-Feldman* [5] doctrine, that Plaintiff's claim based on the United States/Swiss treaty is frivolous, that Plaintiff's claim Defendants violated the IRS code as to returns lacks merit, and that Defendants Biggar and Mahan are entitled to absolute judicial immunity.

II. Analysis.

A. *Rooker-Feldman* Doctrine.

In his First Amended Complaint, Plaintiff challenges the correctness of the state court's discovery proceedings under the Constitution, federal law and a United States treaty. It is well established that a United States District Court does not have authority to review the final determinations of a state court. *See D.C. Ct. of App. v. Feldman*, 460 U.S. 462, 482 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 416 (1923); *Worldwide Church of God v. McNair*, 805 F.2d 888, 890 (9th Cir. 1986). This doctrine also bars federal district courts from reviewing interlocutory state court decisions. *See Doe & Assocs. Law Offices v. Napolitano*, 252 F.3d 1026, 1030 (9th Cir. 2001). Review of state court decisions can only be secured in the United States Supreme Court. *See* 28 U.S.C. § 1257 (granting the United States Supreme Court the right to review "final judgments ... rendered by the highest court of a State"); *Feldman*, 460 U.S. at 482; *McNair*, 805 F.2d at 890. This rule also applies when the challenge to the state court's actions

involve federal. constitutional issues. *See Feldman*, 460 U.S. at 484-86. A district court may not exercise jurisdiction over constitutional claims that are "inextricably intertwined" with claims decided in state court proceedings. *See id.* at 482 n.16; *McNair*, 805 F.2d at 892. A federal claim that was or could have been raised in a state court action is inextricably intertwined with a state court judgment:

> if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it. Where federal relief can only be predicated upon a conviction that the state court was wrong, it is difficult to conceive the federal proceeding as, in substance, anything other than a prohibited appeal of a state-court judgment.

Pennzoil Co. v. Texaco, Inc., 481 U.S. 1,25 (1987) (Marshall, J. concurring); *see also Doe & Assocs. Law Offices*, 252 F.3d at 1029-30.

[6] In the instant case, it would be impossible for this Court to evaluate Plaintiff's claims in the abstract. Rather, the Court would have to examine the discovery proceedings in the state court case to determine whether the issued subpeonas [sic] and later the disclosure of the CTRs violated the Constitution, federal law or applicable treaties. Here, the issues presented to both courts are inextricably intertwined because the Court must hold that the state district court was wrong in compelling discovery of the CTRs in order to find in favor of Plaintiff. Instead of filing a complaint in this Court, Plaintiff should have moved to quash the subpeonas [sic] and challenge the motion to compel the disclosure of the CTRs. Despite notice of the subpeonas [sic] and motion to compel, Plaintiff chose to do nothing. Plaintiff's course of action was then to appeal to the Nevada Supreme Court, and, if necessary, to appeal to the United States Supreme Court. Plaintiff chose not to do this,

choosing instead to file a complaint in federal court in clear contravention of the *Rooker-Feldman* doctrine.

B. Substantive Claims.

Even if the Court had subject matter jurisdiction over Plaintiff's complaint, his claims lack substantive merit. To the extent Plaintiff's claims are based on a violation of federal law, they lack merit. The basis of the vast majority of his claims is that Defendants violated 26 U.S.C. §§ 6103, 7431 by soliciting, disseminating, disclosing, and inspecting confidential return and return information. To maintain a claim under section 7431(a)(2)[1], Plaintiff must allege (1) that the disclosure of his confidential tax return information was unauthorized; (2) that the disclosure was made knowingly or by reason of negligence; and (3) that the disclosure was in violation of § 6103. *See* 28 U.S.C. § 7431(a)(2); *Dietl v. Mirage Resorts. Inc.*, 180 F. Supp. 2d 1150, 1152 (D. Nev. 2002); *see also Hrubec v. Nat'l R.R. Passenger Corp.*, 49 F.3d 1269, 1269 (7th Cir. 1995). Section 7431 creates a civil remedy only against a person who acts in violation of any provision of § 6103; it [7] does not forbid the disclosure when return and return information comes from other sources. *See Hrubec*, 49 F.3d at 1270. If § 6103 is not violated, Plaintiff has no claim under § 7431. *See Dietl*, 180 F. Supp. 2d at 1153. Even if the Court found that the information that Plaintiff complains was disclosed, inspected, or solicited constitutes confidential return or return information , which it does not, Plaintiff's claims still fail because Defendants did not violate § 6103.

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[1]26 U.S.C. § 7431(a)(1) allows a party to pursue civil damages against an employee of the United States for the inspection or disclosure of return or return information that violates § 6103. § 7431(a)(2) allows a party to pursue the same claims as § 7431(a)(l) but against persons who are not employees of the United States.

Section 6103 provides:

(a) General rule. - Returns and return information shall be confidential, and except as authorized by this title -

(1) no officer or employee of the United States,

(2) no officer or employee of any State, any local law enforcement agency receiving information under subsection (i)(7)(A), any local child support enforcement agency, or any local agency administering a program listed in subsection (l)(7)(D) who has or had access to returns or return information under this section, and

(3) no other person (or officer or employee thereof) who has or had access to returns or return information under subsection (e)(l)(D)(iii), paragraph (6), (12), or (16) of subsection (l), paragraph (2) or (4)(B) of subsection (m), or subsection (n),

shall disclose any return or return information obtained by him in any manner in connection with his service as such an officer or an employee or otherwise or under the provisions of this section. For purposes of this subsection, the term "officer or employee" includes a former officer or employee.

§ 6103 prohibits three categories of persons from disclosing tax return information. Here, Defendants do not come within any of the three categories. Defendants clearly do not fall under the first category because they are not officers or employees of the United States. *See id.* § 6103(a)(1). They do not fall under the second category because they are not officers or employees of a State, a local law enforcement agency investigating terrorist activities, a local child support enforcement agency, or local agency administering federal entitlement programs. *See id.* § 6103(a)(2), (i)(7)(A), (l)(7)(D).

Finally, Defendants do not fall under the third category. This category, which governs the conduct of persons other than federal and state employees, addresses only those who had access to returns and return information under § 6103(a)(3), none remotely applicable here. This category includes: (1) persons owning 1 % or more of stock in a corporation who have access to the corporate **[8]** return, *see id.* § 6103(e)(l)(D)(iii); (2) persons enforcing child support obligations, verifying employment status of medicare beneficiary and spouse of medicare beneficiary, and administrating the District of Columbia Retirement Protection Act of 1997, *see id.* § 6103(1)(6), (12), (16); (3) persons seeking to locate a taxpayer to collect a federal claim against the taxpayer, *see id.* § 6103(m)(2)(a); (4) consumer reporting agencies who are agents of the federal government, *see id.* § 6103(m)(2)(B); (5) educational institutions participating in the Higher Education Act, *see id.* § 6103(m)(4)(B); or (6) persons engaged in the processing, storage, transmission or reproduction of returns and return information, the programming, maintenance, repair, testing, and procurement of equipment, and the providing of other services, for purposes of tax administration, *see id.* § 6103(n). Clearly none of the Defendants fit under any of these subcategories, and thus they did not violate § 6103. Because § 7431 creates a civil remedy only against persons who acted in violation of § 6103, the vast majority of Plaintiff's claims are meritless as Defendants do not come under § 6103(a). Moreover, to the extent Plaintiff argues that the disclosure of the CTRs violated his constitutional rights, such claims lack merit. *See United States v. Kaatz*, 705 F.2d 1273, 1242 (10th Cir. 1983).

Finally, to the extent Plaintiff alleges that Defendant's actions violated an Income Convention between the United States and the Swiss Confederation, Senate Treaty No. 105-8, his allegations are meritless. This treaty addresses the situation

of double taxation with regard to taxes on income. The Court has reviewed the treaty and is unclear how the discovery of the CTRs violate it. Nonetheless, Plaintiff points to Article 26. This article, however, governs the transfer of information between the tax authorities of the United States and the Swiss Confederation. It does not address private parties. Moreover, this treaty provides no private right of action other than to persons who consider that the actions of one or both of the contracting states result or will result for him in taxation not in accordance with the treaty. Here, Plaintiff's Count 7 is not based on double taxation but on the discovery process of the Nevada state district court.

[9] C. Absolute Immunity for Defendants Mahan and Biggar.

Even if Plaintiff could invoke subject matter jurisdiction and even if his claims had possible merit, both Defendants Mahan and Biggar are immune from liability. First, Defendant Mahan, acting as a state judge, is absolutely immune from liability for acts in performance of his judicial duties. *See Ashelman v. Pope*, 793 F.2d 1072, 1075 (9th Cir. 1986). Even if the offending action was in error, was done maliciously, or was in excess of his authority, a judge still retains his immunity. *See Stump v. Sparkman*, 435 U.S. 349, 356 (1978). The Supreme Court has delineated two circumstances when a judge's immunity is overridden: (1) actions not taken in the judge's judicial capacity; and (2) actions, although judicial in nature, taken in the complete absence of all jurisdiction. *See Mireles v. Waco*, 502 U.S. 9, 11-12 (1991). In *Stump*, the Supreme Court made clear that "whether an act by a judge is a 'judicial' one relate[s] to the nature of the act itself, i.e., whether it is a function normally performed by a judge, and to the expectations of the parties, i.e., whether they dealt with the judge in his judicial capacity." *Stump*, 435 U.S. at 362. Here,

the act of which Plaintiff complains (affirming and adopting the Discovery Commissioner's Recommendation) was taken in Judge Mahan's judicial capacity while he was presiding over the state court action. Moreover, Defendant Mahan did not act in complete absence of authority as affirming and adopting discovery recommendations are within the province of state district judges.

As discovery commissioner, Defendant Biggar is entitled to absolute quasi-judicial immunity. Absolute immunity extends to agency officials, when they preside over hearings, initiate agency adjudication, or otherwise perform functions analogous to judges and prosecutors. *See Butz v. Economou*, 438 U.S. 478, 512-17 (1978). The Supreme Court has adopted a "functional approach" to determine whether an official is entitled to absolute immunity. This approach looks to the nature of the function performed, not the identity of the actor who performed it. *See Buckley v. Fitzsimmons*, 509 U.S. 259, 269 (1993). Judicial or quasi-judicial immunity extends in appropriate circumstances to non jurists who perform functions closely associated with the judicial process. *See In re Castillo*, 297 F.3d 940, 948 (9th Cir. 2002). The Supreme Court has found immune individuals, **[10]** when acting within the scope of their duties, who participate in the judicial process, such as grand jurors, petit jurors, advocates, law clerks, clerks of the court, and witnesses. *See id.* Here, Defendant Biggar by overseeing discovery proceedings performed functions intimately connected with the judge's own exercise of the judicial function such that he is entitled to absolute immunity.

D. Enjoining Plaintiff from Filing Further Actions.

Defendants pray this Court to issue an order limiting Plaintiff's access to the Nevada Federal District Courts. Before issuing such a restrictive order four guidelines must be followed: (1) Plaintiff must be given adequate notice to oppose

a restrictive pre-filing order before it is entered; (2) the court must present an adequate record for review by listing the case filings that support its order; (3) the trial court must make substantive findings as to the frivolous or harassing nature of Plaintiff's filings; and (4) the order must be narrowly tailored to remedy Plaintiff's particular abuses. *See DeLong v. Hennessey*, 912 Fold 1144,1148-49 (9th Cir. 1990). Plaintiff has been served with Defendants' Motion and has filed his oppositions, and in some instances, sur-oppositions. Defendants have provided the case numbers of some of Plaintiff's pro se complaints filed with this Court as well as state court. However, the Court does not have adequate information to make substantive findings as to the frivolousness or harassing nature of Plaintiff's filings. Therefore, the Court will order Defendants to file a pleading and affidavit detailing why a restrictive order should issue and listing all cases Plaintiff filed in Nevada state court as well as in the United States District Court for the District of Nevada, published or not, along with a brief description of why each lawsuit was frivolous or harassing. If no pleading or affidavit is filed, the Court will enter an order denying Defendants' request. Plaintiff shall have thirty (30) days from the filing of Defendants' pleading to file a response in opposition.

E. Sanctions.

In their respective motions to dismiss, Defendants primarily seek sanctions pursuant to Rule 11 of the Federal Rules of Civil Procedure. Rule 11 states that by filing a complaint the party certifies to the best of its knowledge that, among other things, (1) the complaint is not being [11] presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation, (2) the claims are warranted by existing law or by a nonfrivolous argument for the extension, modification, or

reversal of existing law or the establishment of new law and (3) the claims are not frivolous. *See* Fed. R. Civ. P. 11(b)(1), (2). A pro se party who signs a pleading has an affirmative duty to conduct a reasonable inquiry into the facts and the law before filing. *See Salmon v. Rose*, 104 F. Supp. 2d 1255, 1260 (D. Nev. 2000) (quoting *Bus. Guides, Inc. V. Chromatic Communications Enters., Inc.*, 498 U.S. 533, 551 (199)). A district court has the power to award sanctions sua sponte pursuant to Rule 11. *See* Fed. R. Civ. P. 11(c)(l)(B). Before imposing sanctions sua sponte under Rule II, the court must provide the party with notice and a reasonable opportunity to be heard. *See id.* 11(c); *Salmon*, 104 F. Supp. 2d at 1261.

Along with Rule 11 of the Federal Rules of Civil Procedure, two other, primary sources of authority enable courts to sanction parties or their lawyers for improper conduct: (1) 28 U.S.C. § 1927; and (2) the court's inherent power. *See Fink v. Gomez*, 239 F.3d 989, 991 (9th Cir. 2001). 28 U.S.C. § 1927 provides that:

> Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiples the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorney' fees reasonably incurred because of any such conduct.

A finding of recklessness or bad faith is required before imposing § 1927 sanctions. *See In re Keegan Mgmt. Co.*, 78 F.3d 431, 436 (9th Cir. 1996). Because § 1927 authorizes sanctions only for the multiplication of proceedings, it applies only to unnecessary filings and tactics once a lawsuit has begun. *See id.* Therefore, this section does not apply to an initial pleading. *See id.* Although not sanction able under § 1927, the filing of a complaint may be sanctioned both pursuant to Rule

11 of the Federal Rules of Civil Procedure and the Court's inherent power. *See id.* Finally, the Court may impose § 1927 sanctions upon a pro se plaintiff. *See Wages v. IRS*, 915 F.2d 1230, 1235-36 (9th Cir. 1990).

[12] Under its inherent authority, a Court has the power to sanction a losing party or its lawyers when it has acted in bad faith, vexatiously, wantonly, or for oppressive reasons as well as for willful abuse of the judicial process. *See Gomez v. Vernon*, 255F.3d 1118, 1133-34 (9th Cir. 2001) (quoting *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 766 (1980)). Before imposing inherent power sanctions, the court must find bad faith or conduct tantamount of bad faith. *See id.* Under its inherent authority, the Court may impose attorneys' fees as a sanction. *See Fink*, 239 F.3d at 991 (quoting *Roadway Express*, 447 U.S. at 766)).

As noted previously, Plaintiff's complaint is without basis in law or fact. Additionally, the Defendants have cited several pro se lawsuits Plaintiff filed where he had been sanctioned. Moreover, many of Plaintiff's lawsuits that Defendants cited appear to be vexatious and frivolous. The Defendants now seek costs and fees, with Defendant NSB specifically seeking $20,000. As to Defendant NSB, based on Plaintiff's many vexatious complaints against which it has had to defend itself, this demand at first blush does not seem unreasonable. The Court will therefore order Plaintiff to file with the court a statement to show cause why the requested sanctions should not be imposed for the filing of this frivolous complaint against the Defendants pursuant to Rule 11 of the Federal Rules of Civil Procedure, 28 U.S.C. § 1927, or the inherent authority of the Court. Defendants shall have thirty (30) days from the filing of the Plaintiff's statement to file a response in opposition. If Plaintiff does not show cause, the Court will impose sanctions.

III. Conclusion.

Accordingly, IT IS HEREBY ORDERED that Motion to Dismiss or in the Alternative, for Summary Judgment in regard to Plaintiff's First Amended Complaint (#5, 10) filed by Defendants Swiss Casinos, Seven Circle Gaming, RASLP, RASI, LS&C, and Touton; Defendant Biggar's Motion to Dismiss (#5) and Resubmission of his Motion to Dismiss (#9); Motion of NSB and Jolley to Dismiss Complaint and for Sanctions (#12); and Defendant Mahan's Opposition to Application for Default Judgment and Motion to Dismiss (#31, 32) are **GRANTED**.

[13] IT IS FURTHER ORDERED that Plaintiff's First Amended Complaint (#4) is DISMISSED as to all Defendants.

IT IS FURTHER ORDERED that Plaintiff's Motion for Ex Parte Court Order Directing Defendant Swiss Casinos Holding AG to Answer the First Amended Complaint or in the Alternative for Entry of Default against Defendant (#25) and Countermotion for Order Directing James C. Mahan to Answer the First Amended Complaint or in the Alternative for Entry of Default (#35) are DENIED.

IT IS FURTHER ORDERED that Defendants shall have thirty (30) days from the entry of this order to file with the court a pleading and affidavit detailing why a restrictive order should issue and listing all cases Plaintiff filed in Nevada state court as well as the United States District Court for the District of Nevada, published or not, along with a brief description of why each lawsuit was frivolous or harassing. If no pleading or affidavit is filed, the Court will enter an order denying Defendants' request. Plaintiff shall have twenty (30) days from the filing of the pleading to file a response in opposition.

IT IS FURTHER ORDERED that Plaintiff shall have thirty (30) days from the entry of this order to file with the Court a statement to show cause why the requested sanctions should not be imposed pursuant to Rule 11 of the Federal Rules

of Civil Procedure, 28 U.S.C. § 1927, or the inherent authority of the Court for the filing of this frivolous complaint against the Defendants. Defendants shall have twenty [sic] (30) days from the filing of Plaintiff's statement to file a response in opposition. If Plaintiff does not show cause, the Court will impose sanctions.

DATED this 26th day of February, 2003.

/s/
Kent J. Dawson
United States District Judge

DISTRICT COURT OF THE UNITED STATES
STATE OF NEVADA

ROBERT KAHRE,
Plaintiff,

v.

SWISS CASINOS OF AMERICA, INC., et al.,
Defendants

Case No. CV-S-02-0197-JCM-LRL

FIRST AMENDED COMPLAINT FOR DAMAGES UNDER 26 U.S.C. § 7431 AND FOR PRELIMINARY AND PERMANENT INJUNCTION

RECEIVED AND FILED
MAR 1 2002
LANCE S. WILSON, CLERK
BY:/s/_____
DEPUTY

COMES NOW, the Plaintiff, Robert Kahre, who complains of the acts, omissions and pattern of conduct of Swiss Casinos of America, Inc., Seven Circle Gaming Corporation, Swiss Casinos Holding AG, The Resort at Summerlin Limited Partnership, The Resort at Summerlin, Inc., the law firm of Lionel Sawyer & Collins, Ltd., Todd M. Touton, Nevada State Bank, R. Gardner Jolley, Thomas Biggar, James C. Mahan, Does **[1]** 1-50, and Roes 51-100. As cause for this complaint, Plaintiff states as follows:

JURISDICTION

1. The District Court of the United States has jurisdiction pursuant to 28 U.S.C. § 1331 and 26 U.S.C. § 7431.
2. This case arises under the Constitution and Treaties of the United States and under 26 U.S.C. §§ 6103, 7213, 7213A, and 7431, for the unlawful solicitation, inspection, and disclosure of returns, return information, and taxpayer return information.
3. Questions concerning the existence, scope, and extent of the right to be secure and protected from disclosure of confidential and secret information, papers, and effects are a federal question and determined under federal law. *Heathman v. U.S. District Court for the Central District of California*, 503 F.2d 1032 (C.A.Cal. 1974).

* * *

[10] 46. The Resort at Summerlin Limited Partnership and The Resort at Summerlin, Inc., commenced a civil action in the EJDC against certain building contractors and subcontractors for breach of contract on The Resort/Regent construction project. The case in the EJDC is designated as Case No. A412247, Department XII, and is entitled "In Re: Resort At Summerlin Construction Litigation."
47. The Resort at Summerlin Limited Partnership and The Resort at Summerlin, Inc., also commenced a civil action in the USDC against certain building contractors and subcontractors for breach of contract on The Resort/Regent. The USDC case is Case No. CV-S-00-0182-JLQ (RLH), and entitled Resort At Summerlin Limited Partnership and The Resort At Summerlin, Inc. v. J. A Jones Construction Co., et al.
48. J. A. Jones Construction Company was, at all times relevant herein, the general contractor on The Resort/Regent construction project and is a wholly owned subsidiary of another foreign corporation whose principal place of business is in Germany.

49. The Resort/Regent and its principals contractually relinquished and delegated all management, control over, and responsibility for the construction project at The Resort/Regent to J. A Jones Construction Co., including responsibility for any cost overruns, for the additional contractors fee and sum of $23,000,000.

* * *

51. Defendants, Swiss Casinos of America, Inc., Swiss Casinos Holding AG, The Resort at Summerlin, Inc., The Resort at Summerlin Limited Partnership, Lionel Sawyer & Collins, Ltd., and Todd M. Touton did not name Robert Kahre as a party in The Resort Construction Litigation Cases, however, Robert Kahre was mentioned in the Amended Complaint in the EJDC Case No. 412247 and was alleged to have participated in a scheme to defraud The Resort/Regent and its principals for cost overruns and kickbacks, as was also alleged in the personal memos and communications of Defendant, Todd M. Touton which he filed or caused to be filed in the public records of the EJDC Case 412247.

* * *

54. Plaintiff, Robert Kahre was not served with a summons and complaint and is not a named party in any case with The Resort at Summerlin, Inc., and the Resort at Summerlin, Limited Partnership, including but not limited to, The Resort Construction Litigation Cases.

* * *

GENERAL FACTS AND ALLEGATIONS

64. Plaintiff was not a party to the aforesaid The Resort at Summerlin Construction Litigation Cases and was not properly served with or otherwise given notice of several subpoenas that

solicited and sought the production and disclosure of confidential and secret returns, return information, and taxpayer return information regarding Robert Kahre. The subpoenas that Plaintiff has acquired so far are, however, briefly summarized and submitted herewith and made part hereof as Plaintiff's:

EXHIBIT 5. Subpoena Duces Tecum, dated November 6, 2000, signed by Deputy Clerk of Court, Patricia Walker, in Case No. A412247, commanding NSB to produce documents at the office of Lionel Sawyer & Collins, Ltd., 1700 Bank of America Plaza, 300 South Fourth Street, Las Vegas, Nevada, at the time of 9:00 a.m., on November 20, 2000. This subpoena duces tecum was issued at the request of Lionel, Sawyer and Collins and signed by Todd M. Touton, as attorneys for The Resort at Summerlin, Inc., and The Resort at Summerlin, Limited Partnership. Robert Kahre is not a named party in the litigation in said EJDC Case No. A412247 and was not given proper notice of this subpoena.

EXHIBIT 6. Subpoena Duces Tecum, dated November 8, 2000, signed by Deputy Clerk of Court, Victoria Friedman, in Case No. A412247, commanding Nevada State Bank to produce documents at the office of Lionel, Sawyer & Collins, 1700 Bank of America Plaza, 300 South Fourth Street, Las Vegas, Nevada, at the time of 9:00 a.m., on November 20, 2000. This subpoena duces tecum was issued at the request of Lionel, Sawyer & Collins, Ltd., and was signed by Todd M. Touton, as attorneys for The Resort at Summerlin, Inc., and The Resort at [15] Summerlin, Limited Partnership. Robert Kahre is not a named party in the litigation in said EJDC Case No. A412247 and was not served with or given proper notice of this subpoena. Robert Kahre first obtained a copy of this subpoena from the exhibits presented with the "Defendant's Motion to Compel Nevada State Bank to

Produce Subpoenaed Documents Either Directly or by Authorizing the IRS to Release the Documents Directly to the Resort" (hereinafter "Motion to Compel"), filed in EJDC case No. A 412247, attached hereto as Exhibit 12 along with its Exhibits L and K, and made part hereof.

EXHIBIT 7. Subpoena duces tecum, dated September 11, 2001, issued by the office of Clerk of Court, U.S. District Court, Case No. CV-S-00-0182-JLQ (PAL) commanding NSB to produce documents at the office of Lionel Sawyer & Collins, Ltd., 1700 Bank of America Plaza, 300 South Fourth Street, Las Vegas, Nevada, at the time of 1:00 p.m., on October 9, 2001. This subpoena duces tecum was issued at the request of Lionel, Sawyer & Collins, Ltd., and was signed by Todd M. Touton, as attorneys for The Resort at Summerlin, Inc., and The Resort at Summerlin, Limited Partnership. Robert Kahre is not a named party in the litigation in USDC Case No. CV-S-00-0182-JLQ (PAL) and was not served with or given proper notice of this subpoena. Robert Kahre first obtained a copy of this subpoena from the exhibits presented with the "Response of Nevada State Bank to Motion by the Resort at Summerlin to Compel Nevada State Bank to Produce Documents (hereinafter "NSB's Response to Motion to Compel"), filed in EJDC case No. A 412247, attached hereto as Exhibit 14 and made part hereof.

EXHIBIT 8. Subpoena duces tecum, dated September 24, 2001, issued by the office of Clerk of Court, U.S. District Court, Case No. CV-S-00-0182-JLQ (PAL) commanding NSB's agent Jodi Graham to produce documents at the office of Lionel Sawyer & Collins, Ltd., 1700 Bank of America Plaza, 300 South Fourth Street, Las Vegas, Nevada, at the time of 10:00 a.m., on October 10, 2001. This subpoena duces tecum was issued at the

request of Lionel, Sawyer & Collins, Ltd., and was signed by Todd M. Touton, as attorneys for The Resort at Summerlin, Inc., and The Resort at Summerlin, Limited Partnership. Robert Kahre is not a named party in the [16] litigation in USDC Case No. CV-S-00-0182-JLQ (PAL) and was not served with or given proper notice of this subpoena. Robert Kahre first obtained a copy of this subpoena from the exhibits presented with NSB's Response to Motion to Compel, Exhibit 14.

EXHIBIT 9. Subpoena Duces Tecum, dated February 27, 2001, issued by the office of Clerk of Court, U.S. District Court, Case No. CV-S-00-0182-JLQ (PAL) commanding Wells Fargo Bank to produce documents at the office of Lionel Sawyer & Collins, Ltd., 1700 Bank of America Plaza, 300 South Fourth Street, Las Vegas, Nevada, at the time of 10:00 a.m., on March 30, 2001. This subpoena duces tecum was issued at the request of Lionel, Sawyer & Collins, Ltd., and was signed by Todd M. Touton, as attorneys for The Resort at Summerlin, Inc., and The Resort at Summerlin, Limited Partnership. Robert Kahre is not a named party in The Resort Construction Litigation Cases and was not served with or given proper notice of this subpoena. Robert Kahre first obtained a copy of this subpoena by an investigation into the USDC records.

* * *

79. Robert Kahre had a reasonable expectation that NSB would give Robert Kahre timely and sufficient notice of the fact that another person or persons were soliciting and attempting to obtain copies of confidential and secret information regarding Robert Kahre, his partnership and his sole proprietorships via the November 6, 2000 subpoena, and further, had a reasonable expectation that NSB would provide and timely serve Robert

Kahre with any and all written communications, pleadings, subpoenas, or other documents being used to solicit said confidential and secret information.

80. Robert Kahre had a reasonable expectation that NSB would exercise and honor its obligations and duties to secure and protect the confidential and secret information about Robert Kahre and his sole proprietorships and partnership from any unlawful or unauthorized disclosure.

81. NSB, by and through its officers, agents and employees, and each of them, did disclose confidential and secret returns, return information, and taxpayer return information pertaining to Robert Kahre by sending or otherwise delivering said confidential and secret information to Swiss Casinos of America, Inc., Swiss Casinos Holding AG, The Resort at Summerlin, Inc., The Resort at Summerlin Limited Partnership, Lionel Sawyer & Collins, Ltd., Todd M. Touton, and each of them, as directed by the subpoena of November 6, 2000, all in violation of law, including, but not limited to, 26 U.S.C. §§ 7213(a)(1),(2); 7431(a)(2); 26 U.S.C. 6103(k)(4); and Tax Convention With Swiss Confederation, Senate Treaty Document 105-8, 105th Congress, 1st Session, and all to the damage and detriment of Robert Kahre.

82. Swiss Casinos of America, Inc., Swiss Casinos Holding AG, The Resort at Summerlin, Inc., The Resort at Summerlin Limited Partnership, and each of them, by and through its officers, agents, and/or employees, did, without legal authority, inspect returns, returns information, and taxpayer return information pertaining to Robert Kahre obtained via the November 6, 2000 subpoena, all in violation of law, including, but not limited to, 26 U.S.C. § 7213A, and all to the damage and detriment of Robert Kahre.

83. Lionel Sawyer & Collins, Ltd. Todd M. Touton, and each of them, by and through their agents and employees, without legal authority, solicited and inspected copies of confidential

and secret returns, return information, and taxpayer return information pertaining to Robert Kahre via the November 8, 2000 subpoena, and did then unlawfully print and publish said confidential and secret information in the public records of USDC Court Case No. CV-S-00-0182-JLQ (PAL) and EJDC Case No. A 412247, and did further disclose said information to Swiss Casinos of America, Inc., Swiss Casinos Holding AG, The Resort at Summerlin, Inc., The Resort at Summerlin Limited Partnership, Defendant Does 1-50, and Defendant Roes 51-100, all in violation of law, including, but not limited to, 26 U.S.C. § 7213 (a)(3) and (4); 26 U.S.C. § 7213A; 26 U.S.C. 6103(k)(4); and Tax Convention With Swiss Confederation, Senate Treaty Document 105-8, 105th Congress, 1st Session, and all to the damage and detriment of Robert Kahre.

* * *

165. Upon information and belief, Todd M. Touton and R. Gardner Jolley met just prior to and before the scheduled hearing on the Motion To Compel and discussed and devised a scheme on how to structure their presentation in the hearing so as to conceal their clients unlawful and unauthorized acts as well as structuring their presentation so as to conceal their own corrupt and negligent acts.

166. A hearing was held on the Motion To Compel on Tuesday, January 15, 2002, before Defendant, Thomas Biggar, who was at all times acting in a ministerial capacity as a Discovery Commissioner in Case No. A412247, and as such is only afforded good faith immunity.

167. Defendant, Thomas Biggar, is not an officer of the State of Nevada.

168. After their meeting, Defendants, Todd M. Touton and R. Gardner Jolley, appeared at the time of and for the said January 15, 2002 hearing.

169. Defendant, Todd M. Touton, who signed and filed the Motion To Compel in bad faith and in violation of law, made no oral arguments during the hearing before Defendant Thomas Biggar, on January 15, 2002.

170. Defendant, R. Gardner Jolley, appeared at the January 15, 2002 in bad faith and failed, refused, and neglected to disclose the conflict of interest of his law firm in the case, and further, failed, refused, and neglected to make any oral argument concerning the unlawful solicitation of returns, return information, and taxpayer return information pertaining to Robert Kahre by Todd M. Touton and his clients, or the issue of the unlawful disclosure of such confidential and secret information regarding Robert Kahre by his client, NSB.

171. Defendant R. Gardner Jolley's made no explanation during the hearing as to NSB's failure to give proper notice and service of the November 8, 2000 subpoena upon Robert Kahre.

172. Defendant, Thomas Biggar, was duly apprised that Defendants, The Resort at Summerlin, Inc., The Resort at Summerlin Limited Partnership, Lionel Sawyer & Collins, [39] Ltd., Todd M. Touton, and NSB had violated the Laws of the United States, and was given notice of the same by NSB through its Supplemental Response to the Motion To Compel (Exhibit 15), and Kahre's Notice of Intent to Sue.

173. Defendant, Thomas Biggar, was not only directly apprised of the facts and the law through the papers of NSB, but Defendant Biggar had access to extensive legal materials and information and knew or was grossly negligent in not knowing that the solicitation and disclosure of returns, return information, and taxpayer return information pertaining to Robert Kahre was subject to the provisions and limitations of the laws of the United States, and further, knew that Robert Kahre was not a party to the case and was not given proper notice of or served with subpoenas.

174. Defendant, Thomas Biggar, willfully, knowingly, wantonly and corruptly ignored and disregarded the Law of the Land, the duties, obligations and limitations of NSB regarding disclosure of confidential and secret returns, return information, and taxpayer return information, and did willfully and intentionally violated the rights of Robert Kahre.

175. Defendant, Thomas Biggar, was duly apprised of the fact that The Resort at Summerlin, Inc., The Resort at Summerlin Limited Partnership, Lionel Sawyer & Collins, Ltd., Todd M. Touton, and each of them, had unlawfully solicited returns, return information and taxpayer return information pertaining to Robert Kahre in violation of law, including, but not limited to, 26 U.S.C. § 7213.

176. While being duly informed and fully aware of the facts and the law, and in order to aid, abet, procure and conceal Defendants conspiratorial scheme to violate the laws of the United States, Defendant Thomas Biggar, did corruptly and in fraud and contravention of the law issued his findings granting the Motion To Compel upon grounds that Robert Kahre did not make an appearance. A copy of the minute order is attached hereto as Plaintiff's Exhibit 16 and made part hereof.

177. Defendant, Thomas Biggar, knew that he had the opportunity to question Defendants Todd M. Touton and R. Gardner Jolley if he had any questions about the law or the facts, however, he did not ask any substantive questions of said Defendant attorneys that made appearances at the time of the hearing on January 15, 2002.

178. Defendant, Thomas Biggar, knew that if he did not determine the matter in favor of **[40]** Defendants NSB, The Resort at Summerlin, Inc., The Resort at Summerlin Limited Partnership, Lionel Sawyer & Collins, Ltd., Todd M. Touton, and each of them, they would have been found to have violated the rights of Robert Kahre and would have been found to have acted in clear violation of the laws of the United States, and

further, NSB would have been found to have disclosed confidential and secret return, return information, and taxpayer return information in violation of the laws of the United States.

179. Defendant, Thomas Biggar, did in bad faith and in breach of legal duties and public trust, use the ministerial position of Discovery Commissioner to aid, abet, counsel, and influence a representative of NSB to sign and file a false and fraudulent IRS Form 4056 with the Internal Revenue Service in violation of 18 U.S.C. § 1001.

180. Defendant, Thomas Biggar, did in bad faith and in breach of legal duty and public trust, use the ministerial position of Discovery Commissioner to direct and influence a representative of NSB to sign and file a false and fraudulent IRS Form 4056 in order to unlawfully solicit and cause the disclosure of confidential and secret returns, return information, and taxpayer return information pertaining to Robert Kahre to Defendants Swiss Casinos of America, Inc., Swiss Casinos Holding AG, Lionel Sawyer & Collins, Ltd., Todd M. Touton, Does 1-50, Roes 51-100, and each of them, in criminal violation of 26 U.S.C. § 7213, and further, did use the ministerial position to corruptly provide NSB with an excuse for its unlawful disclosure of said information, all to the damage and detriment of Robert Kahre.

181. On January 15, 2002, Defendants, NSB and R. Gardner Jolley, produced and sent another written communication to Robert Kahre notifying Robert Kahre that Defendant and conspirator Thomas Biggar had made his ministerial findings and had granted the Motion to Compel as preplanned, devised, and intended by Defendants, Todd M. Touton, R. Gardner Jolley, and Thomas Biggar. A copy of the January 15, 2002 written communication is attached hereto as Plaintiff's Exhibit 17 and made part hereof.

182. Defendants, NSB and R. Garner Jolley stated that:

confidential and secret returns, return information, and taxpayer return information pertaining to him, did not report Defendants Swiss Casinos of America, Inc., Swiss Casinos Holding AG, The Resort at Summerlin, Inc., The Resort at Summerlin Limited Partnership, Lionel Sawyer & Collins, Ltd., or Todd M. Touton, for violating the laws of the United States in accordance with 18 U.S.C. § 4, but instead and contrary to duty, NSB and R. Gardner Jolley conspired with said Defendants, and each of them, and in fact aided, abetted, counseled, procured, and furthered their unlawful and fraudulent schemes, pursuant to 18 U.S.C. § 2, and did conspire to oppress and threaten Robert Kahre in the free exercise of his secured rights under the fourth and fifth amendments to the Constitution for the United States of America, and all in violation of 18 U.S.C. § 241.

190. On or about January 16, 2002, Thomas Biggar, signed the "Discovery Commissioner's Report And Recommendations" (hereinafter "Commissioner's Report") that were submitted by Defendants, Lionel, Sawyer & Collins, Ltd., Todd M. Touton and approved by R. Gardner Jolley. Robert Kahre first became aware of the Commissioner's Report via the "AMENDED NOTICE OF ENTRY OF ORDER" sent by Todd M. Touton and Lionel Sawyer & Collins, Ltd., which is attached hereto as Exhibit 18 and made part hereof. The Commissioner's Report is found in Exhibit 18 under Exhibit A.

191. On or about, January 17, 2002, the Deputy Clerk of EJDC gave notice to Defendants, Lionel, Sawyer & Collins, Ltd., Todd M. Touton, NSB and R. Gardner Jolley **[43]** that they had (10) ten days from the date that they received the Commissioner's Report within which to file written objections. The Clerk's Notice is found in Exhibit 18 under Exhibit A.

192. Defendants, Swiss Casinos of America, Inc., Swiss Casinos Holding AG, The Resort at Summerlin, Inc., The Resort at Summerlin Limited Partnership, Lionel Sawyer & Collins, Ltd., Todd M. Touton, NSB and R. Gardner Jolley,

being informed by Robert Kahre that their actions were in direct and continuing violation of the law, did not file an objection to the Thomas Biggar's Commissioner's Report and Recommendations within the ten (10) days given in the Deputy Clerks' notice.

193. On or about January 31, 2002, Defendant, James C. Mahan, having previously conspired with Defendants, Lionel, Sawyer & Collins, Ltd., and Todd M. Touton to violate the Constitution and rights of Robert Kahre, signed an Order affirming and adopting the Commissioner's Report and Recommendations. James C. Mahan's Order is found annexed to the Commissioner's Report in Exhibit 18 under Exhibit A.

194. Defendant, James C. Mahan, having had direct and continuing access to all the records in the case, knew or should have known that by signing the Order of January 31, 2002, he would thereby be aiding and abetting Defendants Lionel, Sawyer & Collins, Ltd., and Todd M. Touton by directing and commanding NSB, its officers, employees, and agents to further violate the laws of the United States of America by disclosing more confidential and secret information regarding Robert Kahre, his sole proprietorships and partnership, and by directing and ordering the officers, employees, and agents of NSB to file a false and fraudulent IRS Form 4506 authorizing the IRS to release the confidential and secret information regarding Robert Kahre to Swiss Casinos of America, Inc., Swiss Casinos Holding AG, The Resort at Summerlin, Inc., The Resort at Summerlin Limited Partnership, Lionel Sawyer & Collins, Ltd., Todd M. Touton, and to others not authorized by law or Robert Kahre to inspect, copy or disseminate the same.

195. Defendant, James C. Mahan, having reasonable and continuing access to the records of the case, legal materials and information, and while acting in a ministerial capacity, did willfully, wantonly and corruptly breach legal duties, obligations and limitations imposed by the laws of the United

States of America and the State of Nevada, and did aid, abet, [44] and command the officers, employees, and agents of NSB to further violate the same.

196. Defendants, Swiss Casinos of America, Inc., Swiss Casinos Holding AG, The Resort at Summerlin, Inc., The Resort at Summerlin Limited Partnership, Lionel Sawyer & Collins, Ltd., and Todd M. Touton, did not notify Robert Kahre of the Commissioner's Report, the Deputy Clerk's Notice, or the Order of James C. Mahan until February 14, 2002, when Robert Kahre received the "Amended Notice Of Entry Of Order" and attachments in the mail. Exhibit 18.

197. Defendant, NSB and R. Gardner Jolley, being in possession of or having access to confidential and secret return, tax return, and taxpayer return information regarding Robert Kahre, never did serve Robert Kahre with the Commissioner's Report and Recommendations, the Deputy Clerk's Notice, or the said Order of James C. Mahan.

SIXTH CAUSE OF ACTION
INDUCING OTHERS TO UNLAWFULLY SOLICIT & DISCLOSE CONFIDENTIAL AND SECRET INFORMATION

198. Plaintiff Robert Kahre repeats and realleges the allegations of Paragraphs 1 through 197 of this Complaint as though fully set forth herein.

199. Swiss Casinos of America, Inc., Swiss Casinos Holding AG, The Resort at Summerlin, Inc., The Resort at Summerlin Limited Partnership, Lionel Sawyer & Collins, Ltd., Todd M. Touton, and each of them, knew or were grossly negligent in not knowing that soliciting return information is prohibited by law, and while knowing that the conspiratorial scheme was unlawful and unauthorized, said Defendants not only paid others to produce and disclose confidential and secret returns, return information, and taxpayer return information

regarding Robert Kahre, The Resort at Summerlin, Inc., The Resort at Summerlin Limited Partnership, Lionel Sawyer & Collins, Ltd., Todd M. Touton, and each of them, drafted, completed, or otherwise filled in the information spaces on an IRS Form 4506 and submitted it to NSB with intent to have a Bank representative sign and submit the IRS Form to the Internal Revenue Service, all in violation of law, including, but not limited to, 26 U.S.C. § 7213(a)(4). *See* Exhibit K attached under Exhibit 12, herein.

200. The Resort at Summerlin, Inc., The Resort at Summerlin Limited Partnership, Lionel **[45]** Sawyer & Collins, Ltd., Todd M. Touton, and each of them, knew or were grossly negligent in not knowing that if a representative of NSB had signed and filed the IRS Form 4506 that they themselves filled out and presented to NSB, the representative of the Bank could be guilty of and charged with a violation of 26 U.S.C. § 7213 and/or 18 U.S.C. § 1001 for filing a false and fraudulent document with the IRS.

201. The Resort at Summerlin, Inc., The Resort at Summerlin Limited Partnership, Lionel Sawyer & Collins, Ltd., Todd M. Touton, and each of them, knew or were grossly negligent in not knowing that IRS Form 4506 is not used to obtain CTRs and SARs, and is not used to obtain returns, return information, or taxpayer return information from or on third parties, and further, they intended to use the IRS Form 4506 to induce an IRS agent to violate the laws pertaining to disclosure of return information and subjecting the responding agent(s) to possible criminal and and civil liabilities.

202. When NSB, by and through Defendant, R. Gardner Jolley, purportedly refused to sign and submit the completed IRS Form 4506, Swiss Casinos of America, Inc., Swiss Casinos Holding AG, The Resort at Summerlin, Inc., The Resort at Summerlin Limited Partnership, Lionel Sawyer & Collins, Ltd., Todd M. Touton, and each of them, filed a Motion To Compel

(Exhibit 12) a representative of NSB to sign and submit said IRS Form 4506 to the Internal Revenue Service with intent to further their unlawful schemes to unlawfully solicit and obtain confidential and secret information regarding Robert Kahre.

203. NSB, by and through its officers, agents, and/or employees, and each of them, did in fact unlawfully disclose confidential and secret returns, return information, and taxpayer return information regarding Robert Kahre, and intended to obtain an alleged "court order" to condone previous unlawful acts and omissions and commanding and authorizing NSB to continue in its conspiracy with Defendants, and each of them, to violate the laws of the United States and to violate the rights of Robert Kahre, all in violation of law, including, but not limited to, 18 U.S.C. § 241.

204. Defendant, Thomas Biggar, did in fact agree with and did unlawfully and in contravention of law, conspire with other Defendants, and each of them, to direct and order NSB to file a false and fraudulent IRS Form 4506 with the Internal Revenue Service in violation of 18 U.S.C. § 1001, and further, directed and ordered that the unlawfully solicited **[46]** confidential and secret returns, return information, and taxpayer return information pertaining to Robert Kahre was to be disclosed to Defendants Swiss Casinos of America, Inc., Swiss Casinos Holding AG, The Resort at Summerlin, Inc., The Resort at Summerlin Limited Partnership, Lionel Sawyer & Collins, Ltd., Todd M. Touton, Defendant Does 1-50, Roes 51-100, and each of them, all in violation of 26 U.S.C. § 7213, and all to the detriment and damage of Robert Kahre.

SEVENTH CAUSE OF ACTION
VIOLATION OF TREATY

205. Plaintiff Robert Kahre repeats and realleges the allegations of Paragraphs 1 through 204 of this Complaint as though fully set forth herein.

206. The United States of America and the Confederation of Switzerland have entered into the Tax Convention With Swiss Confederation, which at all times relevant to this complaint, was in force and effect. See Senate Treaty Document 105-8, 105th Congress, 1st Session (1997).

207. Plaintiff, Robert Kahre, not being a party to the several cases with The Resort at Summerlin, Inc. and The Resort at Summerlin Limited Partnership, and not being served with process, has reason to believe that The Resort/Regent was owned in whole or in major part by Defendant, Swiss Casinos of America, Inc. and Swiss Casinos Holding AG, and/or other corporations created under the laws of foreign nations, including, but not limited to, Switzerland.

208. Tivolino (U.S.) Inc., a/k/a Swiss Casinos of America, Inc., was created as a wholly owned branch business and subsidiary of its parent foreign corporations, Swiss Casinos Holding AG and Tivolino Holding - AG.

209. Defendants, Swiss Casinos Holding AG, Tivolino Holding - AG, are owned and controlled, in whole or in major part, by Swiss and other foreign nationals or other Swiss or foreign corporations and entities. The Swiss citizens or nationals include Hans Jecklin, Christiane Jecklin, George Haeberling and Ernst Brugger. The Swiss corporations are believed to include Swiss Casinos Holding AG, Tivolino Holding - AG, Swiss Casino Services AG, and Swiss Casino Holding Services AG.

[47] 210. These same Defendant foreign and Swiss entities mentioned in paragraph 209, supra, created several other branch businesses, subsidiaries, and associated special entities to conduct their business affairs and manage their interests, including but not limited to, Tivolino (U.S.) Inc., Seven Circle Gaming Corporation, and Swiss Casinos of America, Inc., as Delaware corporations, and Seven Circle Resorts, Inc., The

Resort at Summerlin, Inc., and The Resort at Summerlin Limited Partnership as Nevada entities.

211. Direction and control of Swiss Casinos Holding AG, Tivolino Holding - AG, Tivolino (U.S.) Inc., Seven Circle Gaming Corporation, Swiss Casinos of America, Inc., Seven Circle Resorts, Inc., The Resort at Summerlin, Inc., and The Resort at Summerlin Limited Partnership, was effected through interlocking boards and executive officers, including but not limited to, Hans Jecklin, Christiane ("Christa") Jecklin, George Haeberling, Ernst Brugger and John Tipton, and through intertwining management and financial agreements and obligations.

212. Upon information and belief, one or more of the Swiss nationals that act as members of the interlocking Board of Directors or as other executive officers of the parent and subsidiary companies, including, but not limited to, the foreign parent companies, are also government officers, employees or agents of the national government of Switzerland and/or its Cantons.

213. Swiss Casinos Holding AG, Tivolino Holding - AG, Tivolino (U.S.) Inc., a/k/a Swiss Casinos of America, Inc., expected to receive tax deductions, financial returns, or other benefits from services, property, licenses, investments, dividends or interest, and from other income derived from the operation of The Resort/Regent gambling and gaming casino and hotel facility which is located in the County of Clark, State of Nevada.

214. The large quantity of corporations, branch companies, partnerships and associated businesses, and all the corporate name changes executed by Swiss Casinos Holding AG, Tivolino Holding - AG, Tivolino (U.S.) Inc., Seven Circle Gaming Corporation, Swiss Casinos of America, Inc., Seven Circle Resorts, Inc., The Resort at Summerlin, Inc., The Resort at Summerlin Limited Partnership, and others, were structured

and confounded so as to avoid certain provisions of the Tax Convention With Swiss Confederation, and to deceive others into initially believing that The Resort/Regent was a domestically owned **[48]** gambling, gaming, hotel and resort facility.

215. Defendants, The Resort at Summerlin Limited Partnership and The Resort at Summerlin, Inc., were effectively sham companies or front businesses for Defendants Swiss Casinos Holding AG, and Swiss Casinos of America, Inc., and other as yet unknown foreign nationals and entities.

216. Defendant Swiss Casinos Holding AG and/or Swiss Casinos of America, Inc., provided financial resources to retain the services of Defendants Lionel Sawyer & Collins, Ltd., Todd M. Touton, and each of them, to commence litigation in the EJDC concerning construction of The Resort/Regent casino and hotel facility.

217. Defendants, The Resort at Summerlin, Inc., The Resort at Summerlin Limited Partnership, Lionel Sawyer & Collins, Ltd., Todd M. Touton, and each of them, knew the true identity of the principals and owners of The Resort/Regent and deceitfully and craftily drafted the complaints, pleadings, motions, papers and the subpoenas in issue and as filed in EJDC Case No. A412247 and USDC Case No. CV-S-00-0182-JLQ (RLH) so as to conceal the identity of real parties in interest, their character, capacities, and nationalities.

218. Defendants Swiss Casinos of America, Inc., Swiss Casinos Holding AG, The Resort at Summerlin, Inc., The Resort at Summerlin Limited Partnership, Lionel Sawyer & Collins, Ltd., Todd M. Touton, and each of them, knew or were grossly negligent in not knowing that the solicitation and disclosure of returns, return information, and taxpayer return information over national boundaries was subject to 26 U.S.C. § 6103(k)(4) and to the Treaties and agreements between the United States of America and Switzerland and other foreign

nations, including but not limited to, the Tax Convention With Swiss Confederation, Senate Treaty Document 105-8, 106th Congress, 1st Session.

219. Defendants Swiss Casinos of America, Inc., Swiss Casinos Holding AG, The Resort at Summerlin, Inc., The Resort at Summerlin Limited Partnership, Lionel Sawyer & Collins, Ltd., Todd M. Touton, and each of them, knew or were grossly negligent in not knowing that NSB and the other financial institutions that were served with subpoenas to produce and disclose returns, return information, and taxpayer return information pertaining to Robert Kahre were and are agents of the United States and are under the direction and control of the Secretary of Treasury. See Public Law 95-147, see also Tax Convention **[49]** With Swiss Confederation, Article 3 § f(ii).

220. Defendants Swiss Casinos of America, Inc., Swiss Casinos Holding AG, The Resort at Summerlin, Inc., The Resort at Summerlin Limited Partnership, Lionel Sawyer & Collins, Ltd., Todd M. Touton, and each of them, knew or were grossly negligent in not knowing that NSB and the other financial institutions that were served with subpoenas to produce and disclose returns, return information, and taxpayer return information pertaining to Robert Kahre were agencies or instrumentalities of the government of the United States and were within the provisions and limitation of the Tax Convention With Swiss Confederation and are not only entitled to the benefits, but are also subject to the secrecy provisions and other restrictions imposed upon the use of confidential and secret returns, return information, and taxpayer return information.

221. Defendants Swiss Casinos of America, Inc., Swiss Casinos Holding AG, The Resort at Summerlin, Inc., The Resort at Summerlin Limited Partnership, Lionel Sawyer & Collins, Ltd., Todd M. Touton, and each of them, knew or were

grossly negligent in not knowing that NSB was NOT authorized to sign an IRS Form 4506 authorizing the Internal Revenue Service to produce and disclose confidential and secret and secret returns, return information, and taxpayer return information over to Swiss nationals or Swiss corporations, or for the private use of Defendants, and each of them, and for further disclosure and dissemination to of said confidential and secret information to Defendant Does 1-50 and Roes 51-100.

222. Defendants Swiss Casinos of America, Inc., Swiss Casinos Holding AG, The Resort at Summerlin, Inc., The Resort at Summerlin Limited Partnership, Lionel Sawyer & Collins, Ltd., Todd M. Touton, and each of them, knew or were grossly negligent in not knowing that the confidential information sought, disclosed and disseminated in and through their civil construction litigation cases was:

> "secret . . . and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment, collection, or administration of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Convention. Such persons shall use the information only for such purposes." (Tax Convention With Swiss Confederation, Article 26)

223. Defendants Swiss Casinos of America, Inc., Swiss Casinos Holding AG, The **[50]** Resort at Summerlin, Inc., The Resort at Summerlin Limited Partnership, Lionel Sawyer & Collins, Ltd., Todd M. Touton, and each of them, by and through their officers, agents, and/or employees, while knowing that they did not qualify as one of the persons or authorities involved in the assessment, collection, administration, enforcement or prosecution of a case relating to taxes or tax fraud under the Tax Convention With Swiss Confederation, did

combine together and with each other to unlawfully solicit, obtain, disclose, and disseminate confidential and secret information to Swiss nationals, Swiss corporations, and other foreign individuals or entities that reside in Switzerland, the United States, and/or other foreign nations.

224. Defendants Swiss Casinos of America, Inc., Swiss Casinos Holding AG, The Resort at Summerlin, Inc., The Resort at Summerlin Limited Partnership, Lionel Sawyer & Collins, Ltd., Todd M. Touton, and each of them, by and through their officer, agents, and/or employees, not only unlawfully solicited and obtained returns, return information, and taxpayer return information regarding Robert Kahre in violation of the Tax Convention With Swiss Confederation, Defendants used the confidential and secret information for unlawful and unauthorized purposes and did disseminated the same to others not authorized to have access to, review, obtain copies of, or possess such information.

225. After unlawfully soliciting and obtaining large quantities of confidential and secret returns, return information, and taxpayer return information regarding Robert Kahre and his partnership and sole proprietorships through their civil litigation, Swiss Casinos of America, Inc., Swiss Casinos Holding AG, The Resort at Summerlin, Inc., The Resort at Summerlin Limited Partnership, Lionel Sawyer & Collins, Ltd., Todd M. Touton, and each of them, by and through, their officers, agent, and/or employees, did turn over and deliver the said confidential and secret information to the U.S. Department of Justice and to a federal Grand Jury for purposes unknown to Robert Kahre.

226. Defendants, NSB and R. Gardner Jolley knew or were grossly negligent in not knowing that the Bank was an agency of the United States and was under the direction and control of the Secretary of Treasury, and was subject to the terms and limitations of the Tax Convention With Swiss Confederation,

including but not limited to, Article 26 concerning secrecy, disclosure, and use of returns, return information, and taxpayer return information in [51] the Banks possession or secret information that the NSB has access to.

227. Defendants NSB and R. Gardner Jolley knew or were grossly negligent in not knowing that The Resort Construction Litigation Cases did not directly involve an assessment, or the collection, enforcement or prosecution of a tax matter, and that the Tax Convention With Swiss Confederation prohibits the disclosure and use of secret and confidential returns, return information, and taxpayer return information for any other purpose than those specified.

228. Defendants NSB and R. Gardner Jolley knew or were grossly negligent in not knowing that the disclosure of "secret" and "confidential" information to Swiss nationals, corporations, individuals, or other persons was unlawful and unauthorized.

229. Defendants NSB and R. Gardner Jolley willfully and knowingly violated the law of the land, including but not limited to, 26 U.S.C. § 6103(k)(4) and Treaties and Conventions made between the United States and Switzerland and did in fact unlawfully and without authority produce and disclose secret and confidential returns, return information, and taxpayer return information pertaining to Robert Kahre to Swiss Casinos of America, Inc., Swiss Casinos Holding AG, The Resort at Summerlin, Inc., The Resort at Summerlin Limited Partnership, Lionel Sawyer & Collins, Ltd., Todd M. Touton, foreign nationals, and each of them, who thereafter disclosed said confidential and secret information to numerous Defendant Does 1-50 and Roes 51-100.

230. Defendant, Thomas Biggar, sat as a ministerial Discovery Commissioner in the in private EJDC Case No. A412247, and in the hearing held on January 15, 2002, where Defendants Todd M. Touton and R. Gardner Jolley appeared,

and where Thomas Biggar had more than sufficient opportunity to inquire into the matters complained of herein.

231. Thomas Biggar, being corrupt, predisposed and grossly negligent, did not ask any meaningful questions of Defendant attorneys Todd M. Touton or R. Gardner Jolley at the January 15, 2002 hearing on The Motion To Compel.

232. On or about January 16, 2002, Defendant, Thomas Biggar, in furtherance of the unlawful schemes, acts and artifices of Defendants Swiss Casinos of America, Inc., Swiss Casinos Holding AG, The Resort at Summerlin, Inc., The Resort at Summerlin Limited Partnership, Lionel Sawyer & Collins, Ltd., Todd M. Touton, and each of them, did corruptly **[52]** and in contravention of law, upon information and belief, did issue a Discovery Commissioner's Report and Recommendation approving and directing NSB to sign and file a false and fraudulent IRS Form 4056 with the Internal Revenue Service whereby Swiss Casinos of America, Inc., Swiss Casinos Holding AG, The Resort at Summerlin, Inc., The Resort at Summerlin Limited Partnership, Lionel Sawyer & Collins, Ltd., Todd M. Touton, and each of them, could obtain even more secret and confidential returns, return information, and taxpayer return information regarding Robert Kahre.

233. On or about January 31, 2002, Defendant, James C. Mahan, approved and adopted the Commissioner's Report whereby he ordered and directed NSB to sign and file a false and fraudulent IRS Form 4056 with the Internal Revenue Service whereby Swiss Casinos of America, Inc., Swiss Casinos Holding AG, The Resort at Summerlin, Inc., The Resort at Summerlin Limited Partnership, Lionel Sawyer & Collins, Ltd., Todd M. Touton, and each of them, could obtain even more secret and confidential returns, return information, and taxpayer return information regarding Robert Kahre.

234. Defendant, Thomas Biggar and James Mahan knew that EJDC Case No. A412247 did not directly involve an

assessment, or the collection, enforcement or prosecution of a tax matter, and further, knew or were grossly negligent in not knowing that the Tax Treaty With Swiss Confederation prohibited the disclosure and use of returns, return information, and taxpayer return information for any other purpose than those specified in Article 26 therein.

235. Defendant, Thomas Biggar and James Mahan knew or were grossly negligent in not knowing that filing a false and fraudulent IRS Form 4506 would be in violation of 18 U.S.C. § 1001, and further, knew or was grossly negligent in not knowing that the alleged Discovery Commissioner's Report and subsequent Order approving and adopting the same would induce, command and cause another party to disclose return and taxpayer return information in violation of 26 U.S.C. § 6103(k)(4) and the Tax Convention With Swiss Confederation, Article 26, and would be in criminal violation of law, including, but not limited to, 26 U.S.C. § 7213.

236. Defendant, Thomas Biggar and James C. Mahan knew or were grossly negligent in not knowing that they, and each of them, were not authorized to use their ministerial **[53]** positions of Discovery Commissioner and Judge in the District Court, Clark County, Nevada, to aid, abet, council, command or procure the commission of crimes against the laws of the United States or to violate the rights of Robert Kahre to notice and service of process and to be secure in his person, papers, and effects.

237. By the foregoing acts and omissions, Defendants have individually and in combination together, conspired with each other to violate the Tax Convention With Swiss Confederation and to obtain confidential and secret information and to thereafter use the same for unlawful and unauthorized purposes, and all in violation of the secured rights and immunities of, and to the damage and detriment of, Robert Kahre.

238. By the foregoing acts and omissions, Defendants have individually and in combination together, conspired with eachother to disclose and disseminate the confidential and secret information regarding Robert Kahre to a large number of people both here and abroad who are or may be concerned with or are otherwise watching a high profile and public case.

APPENDIX C
Relevant Statutory Provisions

Section 6103 of Title 26, United States Code, provides in pertinent part:

> § 6103. Confidentiality and disclosure of returns and return information.
>
> (a) General rule. Returns and return information shall be confidential, and except as authorized by this title--
>
> (1) no officer or employee of the United States,
>
> (2) no officer or employee of any State, any local law enforcement agency receiving information under subsection (i)(7)(A), any local child support enforcement agency, or any local agency administering a program listed in subsection (l)(7)(D) who has or had access to returns or return information under this section, and
>
> (3) no other person (or officer or employee thereof) who has or had access to returns or return information under subsection (e)(1)(D)(iii), paragraph (6), (12), (16), (19), or (20) of subsection (l), paragraph (2) or (4)(B) of subsection (m), or subsection (n),
>
> shall disclose any return or return information obtained by him in any manner in connection with his service as such an officer or an employee or otherwise or under the provisions of this section. For purposes of this subsection,

the term "officer or employee" includes a former officer or employee.

(b) Definitions. For purposes of this section--

(1) Return. The term "return" means any tax or information return, declaration of estimated tax, or claim for refund required by, or provided for or permitted under, the provisions of this title which is filed with the Secretary by, on behalf of, or with respect to any person, and any amendment or supplement thereto, including supporting schedules, attachments, or lists which are supplemental to, or part of, the return so filed.

(2) Return information. The term "return information" means–

(A) a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax,

penalty, interest, fine, forfeiture, or other imposition, or offense,

(B) any part of any written determination or any background file document relating to such written determination (as such terms are defined in section 6110(b)) which is not open to public inspection under section 6110,

* * *

(3) Taxpayer return information. The term "taxpayer return information" means return information as defined in paragraph (2) which is filed with, or furnished to, the Secretary by or on behalf of the taxpayer to whom such return information relates.

* * *

(6) Taxpayer identity. The term "taxpayer identity" means the name of a person with respect to whom a return is filed, his mailing address, his taxpayer identifying number (as described in section 6109), or a combination thereof.

(7) Inspection. The terms "inspected" and "inspection" mean any examination of a return or return information.

(8) Disclosure. The term "disclosure" means the making known to any person in any manner whatever a return or return information.

* * *

Section 7431 of Title 26, United States Code, provides:

> 26 U.S.C. § 7431. Civil damages for unauthorized inspection or disclosure of returns and return information.
>
> (a) In general.
>
> (1) Inspection or disclosure by employee of United States. If any officer or employee of the United States knowingly, or by reason of negligence, inspects or discloses any return or return information with respect to a taxpayer in violation of any provision of section 6103, such taxpayer may bring a civil action for damages against the United States in a district court of the United States.
>
> (2) Inspection or disclosure by a person who is not an employee of United States. If any person who is not an officer or employee of the United States knowingly, or by reason of negligence, inspects or discloses any return or return information with respect to a taxpayer in violation of any provision of section 6103, such taxpayer may bring a civil action for damages against such person in a district court of the United States.
>
> (b) Exceptions. No liability shall arise under this section with respect to any inspection or disclosure--
>
> (1) which results from a good faith, but erroneous, interpretation of section 6103, or
>
> (2) which is requested by the taxpayer.
>
> (c) Damages. In any action brought under subsection (a), upon a finding of liability on the part

of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the sum of--

(1) the greater of--

(A) $ 1,000 for each act of unauthorized inspection or disclosure of a return or return information with respect to which such defendant is found liable, or

(B) the sum of--

(i) the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure, plus

(ii) in the case of a willful inspection or disclosure or an inspection or disclosure which is the result of gross negligence, punitive damages, plus

(2) the costs of the action, plus

(3) in the case of a plaintiff which is described in section 7430(c)(4)(A)(ii), reasonable attorneys fees, except that if the defendant is the United States, reasonable attorneys fees may be awarded only if the plaintiff is the prevailing party (as determined under section 7430(c)(4)).

(d) Period for bringing action. Notwithstanding any other provision of law, an action to enforce any liability created under this section may be brought, without regard to the amount in controversy, at any time within 2 years after the date of discovery by the plaintiff of the unauthorized inspection or disclosure.

(e) Notification of unlawful inspection and disclosure. If any person is criminally charged by indictment or information with inspection or disclosure of a taxpayer's return or return information in violation of–

(1) paragraph (1) or (2) of section 7213(a),
(2) section 7213A(a), or
(3) subparagraph (B) of section 1030(a)(2) of title 18, United States Code, the Secretary shall notify such taxpayer as soon as practicable of such inspection or disclosure.

(f) Definitions. For purposes of this section, the terms "inspect", "inspection", "return", and "return information" have the respective meanings given such terms by section 6103(b).

(g) Extension to information obtained under section 3406. For purposes of this section–

(1) any information obtained under section 3406 (including information with respect to any payee certification failure under subsection (d) thereof) shall be treated as return information, and
(2) any inspection or use of such information other than for purposes of meeting any requirement under section 3406 or (subject to the safeguards set forth in section 6103) for purposes permitted under section 6103 shall be treated as a violation of section 6103. For purposes of subsection (b), the reference to section 6103 shall be treated as including a reference to section 3406.

(h) Special rule for information obtained under section 6103(k)(9). For purposes of this section, any reference to section 6103 shall be treated as including a reference to section 6311(e).

Section 1331 of Title 28, United States Code, provides:

> The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

APPENDIX D
Other Relevant Material

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

THE RESORT AT SUMMERLIN LIMITED PARTNERSHIP, et al.,
Plaintiffs,
v.

J. A. JONES CONSTRUCTION COMPANY, et al.,
Defendants

Case No. CV-S-00-0182-JLQ-PAL

STIPULATION AND ORDER TO DISMISS CLAIMS OF PERFORMANCE CONTRACTING, INC. AND THE RESORT AT SUMMERLIN, L.P. AND THE RESORT AT SUMMERLIN, INC.

RECEIVED AND FILED
SEP 4 '01
LANCE S. WILSON, CLERK
BY:/s/_____
DEPUTY

[2] IT IS HEREBY STIPULATED AND AGREED, by and between Performance Contracting, Inc. ("PCI") and The Resort at Summerlin, Inc. and The Resort at Summerlin, L.P. (collectively the "Resort"), through their respective counsel of record, as follows:

1. All claims asserted by the Resort in its Second Amended Complaint against PCI in the above-captioned

action shall be dismissed in their entirety with prejudice, each p[illegible] to bear its own costs and attorney's fees; and

[3] 2. All claims asserted by PCI in its counterclaim against the Resort in the above-captioned action shall be dismissed in their entirety with prejudice, each party to bear its own costs and attorney's fees.

Dated this 3rd day of August, 2001.

JOLLEY, URGA, WIRTH & WOODBURY

By: /s/
Roger A. Wirth, Esq.
Martin A. Little, Esq.
3800 Howard Hughes Pkwy, #1600
Las Vegas, NV 89109
Attorneys for PCI

LIONEL, SAWYER & COLLINS

By: /s/
Todd M. Touton, Esq.
300 South Fourth Street, #1700
Las Vegas, NV 89101
Attorneys for The Resort

ORDER

IT IS SO ORDERED

DATED this 22nd day of August, 2001,

/s/ James L. Quackenbush
United States District Judge

Submitted By:

JOLLEY, URGA, WIRTH & WOODBURY
By: /s/
Roger A. Wirth, Esq.
Martin A. Little, Esq.
3800 Howard Hughes Pkwy, #1600
Las Vegas, NV 89109
Attorneys for PCI

DISTRICT COURT
CLARK COUNTY, NEVADA

IN RE: THE RESORT AT SUMMERLIN
CONSTRUCTION LITIGATION

Case No. a412247
Dept. No. XII

STIPULATION AND ORDER TO DISMISS CLAIMS OF PERFORMANCE CONTRACTING, INC. AND THE RESORT AT SUMMERLIN, L.P. AND THE RESORT AT SUMMERLIN, INC.

FILED
AUG 21 '01
/s/Shirley B. Parraguirre
CLERK

IT IS HEREBY STIPULATED AND AGREED, by and between Performance Contracting, Inc. ("PCI") and The Resort at Summerlin, Inc. and The Resort at Summerlin, L.P. (collectively the "Resort"), through their respective counsel of record, as follows:

1. All claims asserted by PCI against the Resort in PCI's cross-claim and statement of facts constituting lien filed in the above-captioned consolidated action shall be dismissed in their entirety with prejudice, and each party to bear its own costs and attorney's fees; and

2. All claims asserted by the Resort against PCI in its cross-claim filed in the above-captioned consolidated action shall be dismissed in their entirety with prejudice, and each party to bear its own costs and attorney's fees

A scheduling order has been issued and this matter currently set to be heard by the Special Master sometime after August 1, 2001.

Dated this 3rd day of August, 2001.

JOLLEY, URGA, WIRTH & WOODBURY
By: /s/
Roger A. Wirth, Esq.
Martin A. Little, Esq.
3800 Howard Hughes Pkwy, #1600
Las Vegas, NV 89109
Attorneys for PCI

LIONEL, SAWYER & COLLINS
By: /s/
Todd M. Touton, Esq.
300 South Fourth Street, #1700
Las Vegas, NV 89101
Attorneys for The Resort

ORDER

IT IS SO ORDERED

DATED this 14th day of August, 2001,

/s/ James C. Mahan
District Court Judge

Submitted By:

JOLLEY, URGA, WIRTH & WOODBURY

By: /s/
Roger A. Wirth, Esq.
Martin A. Little, Esq.
3800 Howard Hughes Pkwy, #1600
Las Vegas, NV 89109
Attorneys for PCI